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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1946

No. 632

PHILIP B. FLEMING, TEMPORARY CONTROLS ADMINISTRATOR, APPELLANT

vs.

DUSTY RHODES, SHERIFF, TARRANT COUNTY, TEXAS, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS

FILED NOVEMBER 8, 1946

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 682

PHILIP B. FLEMING, TEMPORARY CONTROLS ADMINISTRATOR, APPELLANT

vs.

DUSTY RHODES, SHERIFF, TARRANT COUNTY, TEXAS, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS

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1 In United States District Court, Northern District of Texas

Civil Action No. 1180

PAUL A. PORTER, ADMINISTRATOR OF THE OFFICE OF PRICE ADMINISTRATION, PLAINTIFF

vs.

GUS BROWN, DUSTY RHODES, SULLY MONTGOMERY, MRS. E. V. MCCORD, MRS. SALLIE MORROW, O. B. WOOD, F. A. BAILEY, D. E. BARNHILL, DELLA FRENCH, ANNA BILLINGS, G. W. STOVER, CHARLES BEMBREY, WALTER J. DONNELLY, J. E. BROOKS, J. A. SHELLBERG, MRS. D. M. HAZELWOOD, MRS. HENRIETTA WOODWARD, MRS. MAUD GREGORY, BEATRICE ROBERSON, CLYDE ROBERSON, P. H. RICE, ETHEL C. CANTLEY, LESSIE SAM JOHNSON, J. C. MALONEY, O. O. BLACK, M. E. DOVE, A. E. WOLCOTT, R. M. RILEY, J. W. HUGHES, MRS. J. W. HUGHES, MRS FRANKIE MAE PAGE, and MRS. SOPHIA CHANDLER, DEFENDANTS

2 *Docket entries*

Date	Filings—Proceedings	Judge
July 31, 1946	Filing complaint	
Do	Filing and entering temporary restraining order	J. C. W.
Do	Filing motion for preliminary injunction	
Do	Filing and entering order for hearing on motion for preliminary injunction.	J. C. W.
Do	Issuing writ to serve cert. copy of complaint, temporary restraining order, motion and order for hearing.	
Do	Issuing summons (1 orig. and 3 copies)	
Aug. 5, 1946	Filing and entering order continuing temporary restraining order to Aug. 5th.	T. W. D.
Do	Filing marshal's return on summons and writ to serve (served 8-3-46).	
Do	Filing plea of intervention of Walter J. Donnelly, et ux.	
Aug. 7, 1946	Filing first amended complaint (leave to file granted at hearing in Dallas 8-5-46).	
Do	Filing and entering temporary restraining order	T. W. D.
Do	Filing motion for preliminary injunction	
Do	Filing and entering order setting hearing on motion for prelim. injunction for 8-23-46.	T. W. D.
Do	Issuing summons on amended complaint (1 orig. and 26 copies).	
Do	Issuing writ to serve copy of temporary restraining order, motion for preliminary injunction and order for hearing on Gus Brown and 28 others.	

Docket entries—Continued

Date	Filings—Proceedings	Judge
Aug. 16, 1946	Filing return on summons: Mrs. Sallie Morrow, O. B. Wood, D. E. Barnhill, Della French, J. A. Shellberg, Beatrice & Clyde Roberson, J. C. Maloney, O. O. Black, J. W. and Mrs. J. W. Hughes, and Mrs. Frankie Mae Page	
3	served 8-12-46; Anna Billings, Charles Bembrey, Mrs. D. M. Hazelwood, Mrs. Henrietta Woodward, Ethel C. Cantley, M. E. Dove, A. E. Wolcott, and R. M. Riley served 8-13-46; F. A. Bailey and Lessie Sam Johnson served 8-14-46; Mrs. E. V. McCord served 8-15-46; and Mrs. Maude Gregory served 8-16-46. (G. W. Stover and P. H. Rice not found.)	
Aug. 16, 1946	Filing return on writ to serve: Gus Brown, Sully Montgomery, Mrs. Sallie Morrow, O. B. Wood, D. E. Barnhill, Della French, J. A. Shellberg, Beatrice and Clyde Roberson, J. C. Maloney, O. O. Black, J. W. and Mrs. J. W. Hughes and Mrs. Frankie Mae Page served 8-12-46; Dusty Rhodes, Anna Billings, Charles Bembrey, Mrs. D. M. Hazelwood, Mrs. Henrietta Woodward, Ethel C. Cantley, M. E. Dove, A. E. Wolcott and R. M. Riley served 8-13-46; F. A. Bailey and Sam Johnson served 8-14-46; Mrs. E. V. McCord served 8-15-46; Mrs. Maude Gregory served 8-16-46. (G. W. Stover and P. H. Rice not found.)	
Aug. 23, 1946	Filing motion of defendant F. A. Bailey to dismiss and for severance.	
Do	Filing answer of defendant F. A. Bailey.	
Do	Filing answer of defendant Mrs. Frankie Mae Page.	
Aug. 31, 1946	Filing and entering judgment granting injunction as to defendants, R. M. Riley, D. E. Barnhill, Beatrice and Clyde Robertson, O. B. Wood, Della French, C. W. Stover, Charles Bembrey, Mrs. E. McCord, Mrs. D. M. Hazelwood, Mrs. Henrietta Woodward, P. H. Rice, Ethel C. Cantley, M. E. Dove, A. E. Wolcott and Sam Johnson, and denying injunction as to other defendants.	T. W.D.
Do	Filing and entering restraining order against Dusty Rhodes, Sheriff, Sully Montgomery, Constable, Mr. and Mrs. J. W. Hughes, Mrs. Frankie Mae Page, Mrs. Sophia Chandler, Walter J. Donnelly, J. C. Maloney, Anna Billings, Mrs. Sallie Morrow, O. O. Black, J. E. Brooks, and Mrs. Maude Gregory, pending appeal.	T. W.D.
4 Sept. 27, 1946	Filing plaintiff's application for appeal to Supreme Court	
Do	Filing assignment of errors	
Do	Filing statement as to jurisdiction	
Do	Filing statement directing appellees' attention to rule 12, paragraph 3, of Supreme Ct. Rules	
Do	Filing praecipe for record	

Docket entries—Continued

Date	Filings—Proceedings	Judge
Sept. 28, 1946	Filing and entering order allowing appeal and allowing 60 days to file record	T. W. D.
Do	Filing and entering order amending restraining order as to appellees	T. W. D.
Do	Issuing citation to Dusty Rhodes, Sheriff; Sully Montgomery, Constable; Mrs. Frankie Mae Page, J. W. Hughes and Mrs. J. W. Hughes, and Mrs. Sophia Chandler	T. W. D.
Oct. 1, 1946	Issuing writ to serve copy of appl. for appeal, assignment of errors, statement as to jurisdiction, statement directing attention to rule 12, praecipe, order allowing appeal, and order amending restraining order, on Dusty Rhodes, Sheriff, and Sully Montgomery, Constable.	
Do	Issuing writ to serve copy of appl. for appeal, assignment of errors, statement as to jurisdiction, statement directing attention to rule 12, praecipe, order allowing appeal, and order amending restraining order on Mrs. Frankie Mae Page, J. W. Hughes, Mrs. J. W. Hughes, and Mrs. Sophia Chandler.	
Oct. 3, 1946	Filing return on citation (Dusty Rhodes, Sheriff, Tarrant Co., Tex., served on Oct. 1, 1946; Sully Montgomery, Mrs. J. W. Hughes, Mrs. Frankie Mae Page, and Mrs. Sophia Chandler served on Oct. 2, 1946).	
Do	Filing return on writ to serve copy of appl. for appeal, assignment of errors, statement as to jurisdiction, etc. (Dusty Rhodes served on Oct. 1, 1946; Sully Montgomery served on Oct. 2, 1946).	
5 Oct. 3, 1946	Filing return on writ to serve copy of appl. for appeal, assignment of errors, statement as to jurisdiction, etc. to Mrs. Frankie Mae Page, J. W. Hughes, Mrs. J. W. Hughes and Mrs. Sophia Chandler (all served on Oct. 1, 1946).	
Oct. 9, 1946	Filing and entering order further amending the restraining order issued on Aug. 30, 1946.	T. W. D.
Do	Issuing writ to serve copy of order further amending the restraining order issued on Aug. 30, 1946 on Anna Billings.	
Oct. 14, 1946	Filing return on writ to serve copy of order further amending the restraining order issued on Aug. 30, 1946 on Anna Billings (Ex. 10-10-46).	
Nov. 1, 1946	Filing statements of facts on hearings on August 5th and 7th, 1946.	
Do	Filing statements of facts on hearing on August 23rd, 1946.	

6 In United States District Court

Complaint

Filed July 31, 1946

To the Honorable Judge of Said Court:

Comes now Paul A. Porter, Complainant herein, and states that he is the duly appointed and qualified Administrator of the Office of Price Administration, and brings this action for an order enjoining the defendants from engaging in acts and practices in violation of the Emergency Price Control Act as amended and the Rent Regulations for Housing as hereinafter set forth in this Complaint.

I

That in the judgment of the Administrator the defendants have engaged in acts and practices and are threatening to continue to engage in acts and practices which constitute a violation of Section 4 (a) and 4 (b) of the Emergency Price Control Act of 1942 as amended by the Stabilization Extension Act of 1944 hereinafter referred to as the "Act." That on July 25, 1946, the Emergency Price Control Act of 1942 was amended by striking out the date of June 30, 1946 and there was substituted therefore the date of June 30, 1947, as the expiration date of the "Act." Section 18 provides that the provisions of the "Act" shall take effect as of June 30, 1946, and that the same is now in full force and effect. That the defendants have violated and threaten to violate the provisions of the Rent Regulations for Housing and specifically the provisions of Section 6 which regulations
7 have heretofore been promulgated and issued by the duly appointed Price Administrator under the authority vested in him by said "Act" and said Regulation is duly published in the Federal Register and in full force and effect at the time of the alleged acts hereinafter set forth. That the Administrator pursuant to Section 205 (a) of said act brings this action to force compliance with said act and said Rent Regulations for Housing. Jurisdiction of this "Act" is granted upon this Court by Section 205 (c) of the "Act."

II

That the defendant Gus Brown is the duly elected and acting Justice of Peace for Precinct No. 1, Tarrant County, Texas, and is a resident of Tarrant County, Texas, and that the defendant Sully Montgomery is the duly elected and acting Constable for Precinct No. 1, Tarrant County, Texas, and a resident of Tarrant County, Texas, and that the defendant Dusty Rhodes is the duly

elected and acting Sheriff of Tarrant County, Texas, and a resident of Tarrant County, Texas, and that all of the acts hereinafter complained of were committed in Tarrant County, Texas, and within the jurisdiction of the United States District Court in and for the Northern District of Texas, Fort Worth Division.

III

That Section 6 of the rent regulations for housing provides as follows:

"So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any
8 housing accommodations, by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and regardless of any contract, lease, agreement, or obligation heretofore or hereafter entered into which provides for entry of judgment upon the tenant's confession for breach of the covenants thereof or which otherwise provides contrary hereto."

That certain exceptions exist in Said Rent Regulations wherein tenants may be legally evicted in compliance with the Rent Regulations. Section 6 (b) further provides that a written copy of the notice to evict shall be given to the Area Rent Office within 24 hours after the notice has been given to the tenant, and further that at the time of the filing of action to remove or evict the tenant, the landlord shall give written notice thereof to the Area Rent Office stating the title of the case, the number of the case, the Court in which it is filed, the name and address of the tenant and the ground under Section 6 on which removal or eviction is sought.

IV

That the defendants have violated the Rent Regulations in that the landlord R. M. Riley did on or about July 22, 1946, give to the tenant a notice to vacate the premises known as 2407 Lewis
9 Street, Fort Worth, Texas, which notice specified no grounds as provided in Section 6 of said Regulations for the eviction of a tenant from said property. That suit was filed in the Justice Court of Gus Brown, defendant herein, Docket No. 11469 specifying forcible detainer as the basis for said suit. That on or about May 13, 1946, the landlord had procured from the Office of Price Administration a certificate for the eviction of said tenant, which certificate permitted eviction lawfully of said tenant Robert Ladd six months from May 13, 1946, or on or about November 13, 1946. That the defendant Gus Brown has

indicated that he is not going to pay any attention to the Office of Price Administration on cases filed during the interim period during which the Office of Price Administration was dead." That unless the defendant Gus Brown is restrained from so doing, he will proceed with the trial of the said case on or about July 29th notwithstanding the fact that said suit is in violation of the Price Control Act of 1942, as amended; and contrary to the Rent Regulations for Housing. That unless the defendants Sully Montgomery and Dusty Rhodes are restrained, they will execute a writ of restitution in such invalid judgment rendered or to be rendered, which will interfere with the quiet, lawful, and peaceful possession of the tenant Robert Ladd and other occupants as to the premises at 2407 Lewis Street, Fort Worth, Texas.

V

That the defendants have violated the Rent Regulations in that the landlord J. W. Hughes and Mrs. J. W. Hughes did on or about July 5, 1946, fail to give the tenant a notice to vacate the premises at 1316 Travis Avenue, Fort Worth, Texas. That no grounds exist under Section 6 for the eviction of a tenant from said property. That the suit was filed in the Justice Court of Gus Brown, defendant herein, docket number 11372 on or about July 7, 1946 *specifying* forcible detainer for the basis of said suit. That judgment was rendered July 12, 1946. That on or about March 29, 1946, the landlord secured a certificate for the eviction of J. T. Andrews and Hazel Andrews who are tenants and the parties defendant in the suit as mentioned above, and which certificate permitted eviction of the tenants on or about September 21, 1946. That unless the defendant Gus Brown is restrained from so doing, he will issue a write of restitution in said case notwithstanding that the suit is in violation of the Price Control Act of 1942, as amended, and notwithstanding the fact the defendant has not complied with the Rent Regulations for Housing. That unless the defendants Sully Montgomery and Dusty Rhodes are restrained they will execute the writ of restitution on such invalid judgment to disposses the said tenants, thereby interfering with the quiet, lawful, and peaceful possession of the tenants J. T. Andrews and Hazel Andrews as to the premises mentioned above in Fort Worth, Texas.

VI

That the defendants have violated the Rent Regulations in that the landlord, Mrs. Frankie Mae Page, a widow, did on or about July 16, 1946, file a suit to vacate the tenants E. B. Gregg and Mrs. E. B. Gregg together with the other occupants from the

premises located at 1420 W. Rosedale Street, Fort Worth, Texas. No notice being given specifying the grounds as provided in Section 6 of the Rent Regulations for Housing for the eviction
11 of the tenants from said property. That the suit so filed on July 16, 1946, in the Justice Court of Gus Brown, defendant herein, docket number 11439 specified forcible detainer as the basis for said action. That on July 5, 1946, a notice was given to vacate the said premises, but said notice was insufficient under the Rent Regulations for Housing. That unless the defendant Gus Brown is restrained from so doing, he will execute a writ of restitution to disposes, the tenants aforesaid from said premises notwithstanding that said suit and judgment thereon is in violation of the Price Control Act of 1942, as amended, and contrary to the Rent Regulations for Housing. That unless the defendants Sully Montgomery and Dusty Rhodes are restrained, they will execute any such writ of restitution rendered or to be rendered, which will so interfere with the quiet, lawful and peaceful possession of the tenants E. B. Gregg and Mrs. E. B. Gregg as to the premises located at 1420 W. Rosedale Street, Fort Worth, Texas.

VII

That the defendants herein have violated the Price Control Act of 1942, as amended, and Section 6 of the Rent Regulations for Housing in that they have tried eviction cases and have served process thereon in such eviction cases without requiring the landlord to give required notices to the tenants and without having the required grounds for eviction. That the defendants Gus Brown has not required the landlords to comply with the Price Control Act of 1942, as amended, and the Rent Regulations for Houses, and specifically Section 6 thereof, in that the landlords are not required
12 to give the required notices at the time of the filing of the suit and are not required to have the required grounds for eviction and are not required to give the Area Rent Office a notice of the filing of the suit or a notice to the tenants to vacate as specified in Section 6 of the Rent Regulations for Housing. That the defendant Gus Brown declares that he will handle the eviction suits filed and pending in his Court and will hear said cases and issue process in such cases in a manner as though the Office of Price Administration had not been extended and made effective by the Price Control Extension Act of 1946. That the following is a list of cases filed and pending in Gus Brown's Court, Justice of the Peace, Precinct No. 1, Tarrant County, Texas, in which the Complainant has reason to believe and does believe that said suits were filed contrary to and in violation of the Rent Regulations for Housing. That the Complainant has reason to

believe and does believe that said Gus Brown will hear, try, enter judgment and issue writ of restitution in violation of the Rent Regulations for Housing. That the defendants Sully Montgomery and Dusty Rhodes will act on any such writ of restitution so issued by the defendant Gus Brown, contrary to the Act and the Rent Regulations for Housing. That said cases are described as follows by the Court docket number, the names of the parties, the date suit was filed, and the pro'erty involved. The cases are to wit:

	Docket No.	Parties	File and trial date	Address
	11464	Mrs. E. V. McCord vs. Jack Childress	July 19	2119 Oakwood.
	11465	A. S. Whitley vs. J. B. Lesslie	July 19	709 Fogg.
	11466	Mrs. Sallie Morrow vs. Miss Merrell Burnam.	July 20	3408 Jennings.
13	11467	C. B. Wood vs. Paul Courtney	July 20	1001 E. Arlington.
	11468	F. A. Bailey vs. Jack Fletcher	July 20	3338 Avenue M.
	11470	D. E. Barnhill vs. J. C. Nicholson	July 22	3304 Ryan Avenue.
	11471	Della French vs. B. N. Carrold	July 22	927 College Ave.
	11472	Dr. Cy Murff vs. Mrs. J. N. Johnson	July 22	5132 Dallas Avenue, Garage Apartment.
	11473	Anna Billings vs. Carlisle Garlitz		2025 Pearl.
	11474	G. W. Stover vs. Wroton Parker	July 23	1308 So. Main North, 3-room Apartment.
	11475	Charles Membrey vs. Leroy Williams	July 23	413 E. 6th St., 1 room.
	11476	Mrs. Anna Wilkerson Yarbrough vs. Mrs. Maud Jackson.		3600 Wayside.
	11477	Walter J. Donnelly vs. W. P. Lindsey	July 23	Route 5, Box 197.
	11478	J. E. Brown vs. O. W. Turmon	July 24	2361 So. Riverside Dr.
	11479	J. A. Shellberg vs. W. M. Manor, Jr.	July 24	3405 Pentacost.
	11480	Mrs. D. M. Hazelwood vs. R. M. Bartlett.	July 24	817 Porter.
	11481	Mrs. Henrietta Woodward vs. Mrs. Lock Wicker.	July 24	501 E. Belknap, S. E., Downstairs.
	11482	Mrs. Maud Gregory vs. C. T. Meroney	July 24	1721 College, Upper North Apartment.
	11483	Beatrice and Clyde Roberson vs. Lela Ward.	July 24	600 E. Annie.
	11484	P. H. Rice vs. M. F. Newman	July 24	2701 W. 26th St.
	11485	Ethel C. Cantley vs. Charlie Burns	July 25	3001½ Harding, NE. Upper Room
	11486	Lessie Sam Johnson vs. Jimmie Wright	July 25	1006 So. Jennings Ave., North Downstairs Apt.
14	11487	J. C. Maloney vs. Mary Hemphill	July 25	3821 W. 6th St.
	11488	O. O. Black vs. James L. Bunnell	July 25	1024 Penn St., Upper South Apt. #3.
	11489	M. E. Dove vs. Carl Phillips	July 25	1127 Cambridge, 1 room.
	11490	A. E. Wolcott vs. F. Preston	July 25	5324 No. Hempshire Blvd.

That the above said cases are in addition to the cases mention' in Pars. IV, V, and VI. That notice is hereby given to the defendant Gus Brown to produce the original dockets and all papers in connection therewith as to the cases mentioned in this paragraph and in Pars. IV, V, and VI at the trial of this cause and at the trial on Complainant's cotion for temporary injunction or in the event of the failure thereof, secondary evidence will be offered and introduced to prove the contents of said cases.

VII

Complainant alleges that unless this Court issues a Temporary Restraining Order without notice and that upon hearing for a Motion for Temporary Injunction restraining the defendant Gus

Brown, Justice of the Peace, Dusty Rhodes, Sheriff of Tarrant County, Sully Montgomery, Constable Precinct No. 1, Tarrant County, from so doing, that all and each of them will continue to prosecute suits mentioned herein and will issue process or writ of restitution in said suits rendered the cases herein, and that said practices will do great and irreparable damage to and jeopardize the efforts of the Office of Price Administration and the United States Government to stabilize prices and rents and prevent evictions except in accordance with the Rent Regulations.

Wherefore, Complainant respectfully prays that a temporary restraining order be issued without notice and after notice a preliminary and final judgment be issued enjoining the defendants Gus Brown, Justice of the Peace, Precinct No. 1, Tarrant County, Texas, Sully Montgomery, Constable, Precinct No. 1, Tarrant County, Texas, and Dusty Rhodes, Sheriff of Tarrant County, Texas, from:

(a) Further prosecution or issuing any writ of restitution in the following cases and on any judgment rendered therein to wit:

Docket No.	Parties	File & Trial Date	Address
11464	Mrs. E. V. McCord vs. Jack Childress	July 19	2119 Oakwood.
11465	A. S. Whitley vs. J. D. Lesslie	July 19	709 Fogg.
11466	Mrs. Sallie Morrow vs. Mrs. Merrell Burnam.	July 20	3408 Jennings.
11467	O. B. Wood vs. Paul Courtney	July 20	1001 E. Arlington.
11468	F. A. Bailey vs. Jack Fletcher	July 20	3538 Avenue M.
11470	D. E. Barnhill vs. J. C. Nicholson	July 22	3304 Ryan Avenue.
11471	Della French vs. B. N. Carrold	July 22	927 College Ave.
11472	Dr. Cy Murff vs. Mrs. J. N. Johnson	July 22	5132 Dallas Avenue; Garage Apartment.
11473	Anna Billings vs. Carlisle Garlitz		2025 Pearl.
11474	G. W. Stover vs. Walton Parker	July 23	1308 So. Main, North; 3 room apartment.
11475	Charles Bembrey vs. Leroy Williams	July 23	413 E. 6th St.; 1 room.
11476	Mrs. Anna Wilkerson Yarbrough vs. Mrs. Maud Jackson.		3600 Wayside.
11477	Walter J. Donnelly vs. W. P. Lindsey.	July 23	Route 5, Box 197.
11478	J. E. Brown vs. O. W. Turmon	July 24	2361 So. Riverside Dr.
11479	J. A. Shellberg vs. W. M. Manor, Jr.	July 24	3405 Pentacost.
11480	Mrs. D. M. Hazelwood vs. R. M. Bartlett	July 24	817 Porter.
11481	Mrs. Henrietta Woodward vs. Mrs. Lock Wicker	July 24	501 E. Belknap, SE.; Dow stairs.
11482	Mrs. Maud Gregory vs. C. T. Meroney	July 24	1721 College; Upper, North Apartment.
11483	Beatrice and Clyde Roberson vs. Lela Ward	July 24	600 E. Annie.
11484	P. P. Rice vs. M. F. Newman	July 24	2701 W. 26th St.
11485	Ethel C. Cantley vs. Charlie Burns	July 25	300½ Harding, NE.; Upper Room.
11486	Lessie Sam Johnson vs. Jimmie Wright.	July 25	1006 So. Jennings Ave.; North Downstairs Apt.
11487	J. C. Maloney vs. Mary Hemphill	July 25	3821 W. 6th St.
11488	O. O. Black vs. James L. Bunnell	July 25	1024 Penn St.; Upper, South Apt. #3.
11489	M. E. Dove vs. Carl Phillips	July 25	1127 Cambridge; 1 room.
11490	A. E. Wolcott vs. F. Preston	July 25	5324 No. Hampshire Blvd.
11496	R. M. Riley vs. Robert Ladd	July 22	2607 Lewis.
11372	J. W. and Mrs. J. W. Hughes vs. J. T. and Hazel Andrews	July 5	1316 Travis Avenue.
11439	Mrs. Frankie Mae Page vs. E. B. and Mrs. E. B. Gregg	July 16	1420 W. Rosedale St.

The above all being eviction suits pending on the docket of Gus Brown's Court, Justice of the Peace, Precinct No. 1, Tarrant County, Texas, for and until the plaintiffs and landlords and each of them have complied with the provisions of Section 6 of the Regulations and Hotels and Rooming Houses, and all of the provisions therein contained and required in order to evict a tenant and until they have the required grounds of eviction and until they have given the required notice prior to the filing of suit, or for and until they have filed a petition to secure a certificate of eviction or if they have a certificate of eviction they be required to comply with the provisions of said certificate of eviction as issued by the Area Rent Director of the Fort Worth Defense Rental Area.

(b) Issuing any process to enforce any judgment or issuing any writ of restitution in the above style cases being on eviction suits in Gus Brown's Court, Justice of the Peace, Precinct No. 1, Tarrant County, Texas, for and until a valid judgment has been secured in each of the said cases and for and until the provisions of the Act and Rent Regulations for Housing have been complied with.

The Complainant further prays that all costs of suit be taxed against the defendants and for such other and further relief to which the Complainant herein may be entitled.

W. S. Margowski,
W. S. Margowski,
Attorney for the Office of Price Administration, Fort Worth Club Building, Fort Worth 2, Texas.
2, Texas.
Robt. B. Young, Jr.,
United States District Attorney,
By Frank B. Potter,
Asst. U. S. Atty.

[*Duly sworn to by H. Edward Johnson; jurat omitted in printing.*]

In United States District Court

Motion for preliminary injunction filed July 31, 1946

To the Honorable Judge of said Court:

The Price Administrator, complainant herein, respectfully shows to the Court that the defendants have violated the Rent Regulations for Housing and the Emergency Price Control Act of 1942, as amended by the Emergency Price Control Act of 1946 as more

fully set forth in the verified complaint filed herein and moves the Court for a preliminary injunction, after notice of hearing to the defendants, enjoining, requiring, and restraining the defendants and each of them from:

(a) Further prosecution or issuing any writ of restitution in the following-described cases, to wit:

	Docket No.	Parties	File and trial date	Address
	11464	Mrs. E. V. McCord vs. Jack Childress	July 19	2119 Oakwood.
	11465	A. S. Whitley vs. J. B. Leslie	July 19	709 Fogg.
	11466	Mrs. Sallie Morrow vs. Miss Merrell Burnam.	July 20	3408 Jennings.
	11467	C. B. Wood vs. Courtney	July 20	1001 E. Arlington.
	11468	F. A. Bailey vs. Fletcher	July 20	3538 Avenue M.
	11470	D. E. Barnhill vs. J. C. Nicholson	July 22	3304 Ryan Avenue.
	11471	Della French vs. B. N. Carrold	July 22	927 College Ave.
20	11472	Dr. Cy Murff vs. Mrs. J. N. Johnson	July 22	5132 Dallas Avenue, Garage Apartment. 2025 Pearl.
	11473	Anna Billings vs. Carlisle Garlitz		
	11474	G. W. Stover vs. Walton Parker	July 23	1308 So. Main, North, 3 room apartment.
	11475	Charles Bembrey vs. Leroy Williams	July 23	413 E. 6th St., 1 room
	11476	Mrs. Anna Wilkerson Yarbrough vs. Mrs. Maud Jackson.		3000 Wayside.
	11477	Walter J. Donnelly vs. W. P. Lindsey	July 23	Route 5, Box 107.
	11478	J. D. Brown vs. O. W. Turmon	July 24	2361 So. Riverside Dr.
	11479	J. A. Shellberg vs. W. M. Manor, Jr	July 24	3405 Pentacost.
	11480	Mrs. D. M. Hazelwood vs. R. M. Bartlett.	July 24	817 Porter.
	11481	Mrs. Henrietta Woodward vs. Mrs. Lock Wicker.	July 24	301 E. Belknap, SE., Downstairs.
	11482	Mrs. Maud Gregory vs. C. T. Meroney	July 24	1721 College, Upper, North Apartment.
	11483	Beatrice and Clyde Roberson vs. Lela Ward.	July 24	600 E. Annie.
	11484	P. H. Rice vs. M. F. Newman	July 24	2701 W. 26th St.
	11485	Ethel C. Gantley vs. Charlie Burns	July 25	3003½ Harding, NE., Upper Room
	11486	Lessie Sam Johnson vs. Jimmie Wright	July 25	1006 So. Jennings Ave., North Downstairs Apt.
	11487	J. C. Maloney vs. Mary Hemphill	July 25	3821 W. 6th St.
	11488	O. O. Black vs. James L. Dunnell	July 25	1024 Penn St., Upper, South, Apt. #3.
	11489	M. E. Dove vs. Carl Phillips	July 25	1127 Cambridge, 1 room.
	11490	A. E. Wolcott vs. F. Preston	July 25	5324 No. Hampshire Blvd.
21	11489	R. M. Riley vs. Robert Ladd	July 22	2407 Lewis.
	11372	J. W. and Mrs. J. W. Hughes, vs. J. T and Hazel Andrews.	July 5	1316 Travis Avenue.
	11439	Mrs. Frankie Mae Page vs. E. B. and Mrs. E. B. Gregg.	July 16	1420 W. Rosedale St.

That all of the above cases are eviction suits pending on the docket of Gus Brown, as shown above, who is Justice of the Peace, Precinct No. 1, Tarrant County, Texas. That the defendants herein be restrained from further prosecution, or trial, or issuing any writ of restitution as aforesaid for and until each of them complys with the Rent Regulations for Housing, or until each of them requires that the parties in each of the respective cases comply with the Rent Regulations for Housing and all provisions therein contained and required in order to evict a tenant, and particularly there exists the required grounds for an eviction under the Rent Regulations, that the required notices, prior to the filing of the suit, and all other requirements of Section 6 of the Rent

Regulations for Housing be met. That in the cases where applicable, a certificate of eviction be required and issued by the Rent Director of the Fort Worth Defense Rental Area Office.

(b) Issuing any process to enforce any judgment or from
22 issuing a writ of restitution in any of the cases above described in subparagraph (a), or the enforcement of any such writ of restitution as to the said cases pending in Gus Brown's justice court for Precinct No. 1, Tarrant County, Texas.

Dated this 29th day of July A. D. 1946.

W. S. Margowski,
W. S. MARGOWSKI,
Attorney for the Office of Price Administration, Fort Worth Club Building, Fort Worth District Office.

23 In United States District Court

First amended complaint

Filed August 7, 1946

To the Honorable Judge of Said Court:

Comes now Paul A. Porter, Complainant herein, and states that he is the duly appointed and qualified Administrator of the Office of Price Administration, and brings this action for an order enjoining the defendants from engaging in acts and practices in violation of the Emergency Price Control Act as amended and the Rent Regulations for Housing as hereinafter set forth in this First Amended Complaint. That this First Amended Complaint is filed by leave of Court granted August 5, 1946, at Dallas, Texas.

I

That in the judgment of the Administrator the defendants have engaged in acts and practices and are threatening to continue to engage in acts and practices which constitute a violation of Section 4 (a) and 4 (b) of the Emergency Price Control Act of 1942 as amended by the Stabilization Extension Act of 1944 hereinafter referred to as the "Act." That on July 25, 1946, the Emergency Price Control Act of 1942 was amended by striking out the date of June 30, 1946, and there was substituted therefor the date of June 30, 1947, as the expiration date of the "Act." Section 18 provides that the provisions of the "Act" shall take effect as of June 30, 1946, and that the same is now in full force and
24 effect. That the defendants have violated and threaten to violate the provisions of the Rent Regulations for Housing

and specifically the provisions of Section 6 which regulations have heretofore been promulgated and issued by the duly appointed Price Administrator under the authority vested in him by said "Act" and said Regulation is duly published in the Federal Register and in full force and effect at the time of the alleged acts hereinafter set forth. That the Administrator pursuant to Section 205 (a) of said act brings this action to force compliance with said act and said Rent Regulations for Housing. Jurisdiction of this "Act" is granted upon this Court by Section 205 (c) of the "Act."

II

That the defendant Gus Brown is the duly elected and acting Justice of Peace for Precinct No. 1, Tarrant County, Texas, and is a resident of Tarrant County, Texas, and that the defendant Sully Montgomery is the duly elected and acting Constable for Precinct No. 1, Tarrant County, Texas, and a resident of Tarrant County, Texas, and that the defendant Dusty Rhodes is the duly elected and acting Sheriff of Tarrant County, Texas, and a resident of Tarrant County, Texas, and that all of the acts hereinafter complained of were committed in Tarrant County, Texas, and within the jurisdiction of the United States District Court in and for the Northern District of Texas, Fort Worth Division. That the defendants, Mrs. E. V. McCord, Mrs. Sallie Morrow, O. B. Wood, F. A. Bailey, D. E. Barnhill, Della French, Anna Billings, G. W. Stover, Charles Bembrey, Walter J. Donnelly, J. E. Brown, J. A. Shellberg, Mrs. D. M. Hazelwood, Mrs. Henrietta Woodward, Mrs. Maud Gregory, Beatrice & Clyde Roberson, P. H. Rice, Ethel C. Cantley, Lessie Sam Johnson, J. C. Maloney, O. O. Black, M. E. Dove, A. E. Wolcott, R. M. Riley, J. W. & Mrs. J. W. Hughes, Mrs Frankie Mae Page are in the afformation and belief of the Complainant residents of Tarrant County, Texas.

III

That Section 6 of the Rent Regulations for Housing provides as follows:

"So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and regardless of any contract, lease, agreement or obligation heretofore or here-

after entered into which provides for entry of judgment upon the tenant's confession for breach of the covenants thereof or which otherwise provides contrary hereto."

That certain exceptions exist in said Rent Regulations wherein tenants may be legally evicted in compliance with the Rent Regulations. Section 6 (b) further provides that a written copy of the notice to evict shall be given to the Area Rent Office within 24 hours after the notice has been given to the tenant, and further that at the time of the filing of action to remove or evict
26 the tenant, the landlord shall give written notice thereof to the Area Rent Office stating the title of the case, the number of the case, the Court in which it is filed, the name and address of the tenant and the ground under Section 6 on which removal or eviction is sought.

IV

That the defendants herein have violated the Price Control Act of 1942 as amended and Section 6 of the Rent Regulations for Housing in the following cases to wit:

Docket No.	Parties	File and trial date	Address
11469	R. M. Riley vs. Robert Ladd	July 22	2407 Travis
11470	D. E. Barnhill vs. J. C. Nicholson	July 22	3304 Bryan Avenue.
11473	Anna Billings vs. Carlisle Carlitz		3025 Pearl Avenue.
11483	Beatrice and Clyde Roberson vs. Lela Ward.	July 24	6007 E. Annie.
11372	J. W. and Mrs. J. W. Hughes vs. J. T. and Hazel Andrews.	July 25	1316 Travis.

That as to the above cases the Plaintiffs therein being defendants herein and the Defendant Gus Brown have so violated the said Rent Regulations in that the Defendants have proceeded with the eviction suits without having the grounds for eviction under Section 6 and without giving the required notices prior to the filing of the suit and without giving the required notices of eviction or of the filing of suit to the tenants or to the Area Rent Office as specified in Section 6 of the Rent Regulations for Housing, and as to the above cases the Complainant states that in all of said
27 cases the landlords and defendants herein have heretofore petitioned the Area Rent Office for proper certificates of eviction which were duly granted, but that the defendant-landlords have proceeded with suit against the respective tenants prior to the date specified in each of the respective certificates of eviction authorized for the filing of an eviction suit.

V

That the defendants herein have violated the Price Control Act of 1942 as amended and Section 6 of the Rent Regulations in the following cases to wit:

Docket No.	Parties	File and trial date	Address
11466	Mrs. Sallie Morrow vs. Miss Merrell Burnam.	July 20	3908 Jennings.[1]
11467	O. B. Wood vs. Paul Courtney	July 20	1001 E. Arlington.[1]
11468	F. A. Bailey vs. Jack Fletcher	July 20	3538 Avenue M.[1]
11471	Della French vs. B. N. Carrold	July 22	927 College Ave.[1]
11474	C. W. Stover vs. Walton Parker	July 23	1308 South Main, N., 3-Room Apt.[2]
11475	Charles Membrey vs. Leroy Williams	July 23	413 E. 66th St., 5 Room.[2]
11477	Walter J. Donnelly vs. W. P. Lindsey	July 23	Route 5, Box 197.[2]
11439	Mrs. Frankie Mae Page vs. E. B. and Mrs. E. B. Gregg.	July 16	1420 or 1424 W. Rosedale Street.[3]

[1] Judgment entered July 29, 1946.
[2] Judgment entered July 30, 1946.
[3] Judgment entered July 23, 1946.

That the Plaintiffs in the above listed cases being defendants herein and the defendant Gus Brown have violated the said Rent Regulations in that they have tried the above eviction cases
28 and have rendered judgment thereon, and that the landlords have not given the required notice to the tenants and do not have the required grounds for eviction, and that the defendant Gus Brown has not required the said landlords and defendants herewith to comply with the Price Control Act of 1942 as amended and the Rent Regulations for Housing in that the said landlords and defendants were not required to give the required notices and did not give the required notices at the time of filing the suit and were not required to have and did not have the required grounds for eviction and were not required and did not give the Area Rent Office a notice of the filing of the suit and the notice to the tenants to vacate as specified in Section 6 of the Rent Regulations for Housing. That in each of the above listed cases a judgment has been entered, as noted above, and that said judgment was entered in violation of the Price Control Act of 1942 as amended and said judgments being in violation of the Rent Regulations are not valid for the purpose of the issuance of writs of restitution against the tenants who are in possession of the respective premises.

VI

That the defendants herein have violated the Price Control Act of 1942 as amended and Section 6 of the Rent Regulations for Housing in the following cases:

	Docket No.	Parties	File and trial date	Address
	11464	Mrs. E. V. McCord vs. Jack Childress	July 19	2119 Oakwood.[1]
	11478	J. E. Brooks vs. O. W. Turmon	July 24	2361 So. Riverside Dr.[1]
	11479	J. A. Shellberg vs. W. M. Manor, Jr.	July 24	3405 Pentacost.[1]
29	11480	Mrs. D. M. Hazelwood vs. R. M. Bartlett.	July 24	817 Porter.[1]
	11481	Mrs. Henrietta Woodward vs. Lock Wicker.	July 24	501 E. Belknap, S. E., Downstairs.[1]
	11482	Mrs. Maud Gregory vs. C. T. Meroney	July 24	1721 College, Upper North Apartment.[1]
	11484	P. H. Rice vs. M. F. Newman	July 24	2701 W. 26th St.[1]
	11485	Ethel C. Cantley vs. Charlie Burns	July 25	300½ Harding N.E., Upper Room.[1]
	11487	J. C. Maloney vs. Mary Hemphill	July 25	3821 W. 6th St.[1]
	11488	O. O. Black vs. James L. Bunnell	July 25	1024 Penn, St., Upper, South Apt. #3.[1]
	11489	M. E. Dove vs. Carl Phillips	July 25	1127 Cambridge, 1 Room.[1]
	11490	A. E. Wolcott vs. F. Preston	July 25	5324 No. Hemphire Blvd.[1]
	11486	Lessie Sam Johnson vs. Jimmie Wright	July 25	1006 S. Jennings Ave. N., Downstairs Apt.[2]

[1] Status—Pending.
[2] Status—On appeal to County Court.

That the landlords in each of the above cases being defendants herein and the defendant Gus Brown have violated the said Rent Regulations in that the defendant Gus Brown has not required the landlords and defendants herein to comply with the said Rent Regulations in that they were not required and did not give the required notice at the time of the filing of the suit and were not required and did not have the required grounds for eviction at the time of the filing of the suit and were not required and did not give the Area Rent Office a copy of the notice to the tenants or a notice of the filing of the suit as specified in Section 6 of the Rent Regulations for Housing.

30 VII

That the defendants herein and each of them have violated the Price Control Act of 1942, as amended, and Section 6 of the Rent Regulations for Housing in that they have filed and tried eviction cases and have served or will serve process thereon in such eviction cases without requiring or giving the required notices to the tenants and without having the required grounds *fro* eviction. That the defendant Gus Brown has not required the landlords to comply with the Price Control Act of 1942, as amended, and the Rent Regulations for Housing and the said landlords, defendants herein, have not complied in that the landlords are not required and have not given the required notices at the time of the filing of the suit and are not required and do not have the required grounds for eviction and are not required and did not give to the Area Rent Office a notice of the filing of the suit or a notice to the tenants to vacate as specified in Section 6 of the Rent Regulations for Housing. That the defendant Gus Brown declares that he will handle the eviction suits filed and pending in his Court, and as listed in Paragraphs IV, V, and VI herein, and will hear said

cases and issue process in such cases in a manner as though the Office of Price Administration had not been extended and made effective by the Price Control Extension Act of 1946. That the cases as shown in Paragraphs IV, V, and VI, and incorporated herein, are cases pending in Gus Brown's Court, Justice of the Peace, Precinct No. 1, Tarrant County, Texas, in which the Complainant has reason to belfeve and does believe that said suits were filed contrary to and in violation of the Rent Regulations
31 for Housing. That the Complainant has reason to believe and does believe that said Gus Brown will hear, try, enter judgment and issue writ of restitution in violation of the Rent Regulations for Housing. That the said landlords, defendant herein, will so proceed in prosecution of said suits in violation of the Rent Regulations. That the defendants Sully Montgomery and Dusty Rhodes will act on any such writ of restitution so issued by the defendant Gus Brown, contrary to the "Act" and the Rent Regulations for Housing. That notice is hereby given to the defendant Gus Brown to produce the original dockets and all papers in connection therewith as to the cases mentioned in Paragraphs IV, V, VI at the trial of this cause and at the trial on Complainant's action for temporary injunction or in the event of the failure thereof, secondary evidence will be offered an introduced to prove the contents of said cases.

VIII

Complainant alleges that unless this Court issues a Temporary Restraining Order without notice and that upon hearing for a Motion for Temporary Injunction restraining the defendants Gus Brown, Justice of the Peace, Dusty Rhodes, Sheriff of Tarrant County, Sully Montgomery, Constable Precinct No. 1, Tarrant County, Mrs. Sallie Morrow, O. B. Wood, F. A. Bailey, D. E. Barnhill, Della French, Anna Billings, G. W. Stover, Charles Bembrey, Walter J. Donnelly, J. E. Brown, J. A. Shellberg, Mrs. D. M. Hazelwood, Mrs. Henrietta Woodward, Mrs. Maud Gregory, Beatrice and Clyde Roberson, P. H. Rice, Ethel C. Cantley, Lessie Sam Johnson, J. C. Maloney, O. O. Black, M. E. Dove, A. E. Wolcott, R. M. Riley, J. W. & Mrs. J. W. Hughes, and Mrs. Frankie Mae Page from so doing, that all and each of them
32 will continue to prosecute suits mentioned herein and will issue or have issued process or writ of restitution in said suits herein, and will evict the tenants in violation of the Rent Regulations, and that said practices will do great and irreparable damage to and jeopardize the efforts of the Office of Price Administration and the United States Government to stabilize prices and rents and prevent evictions except in accordance with the Rent Regulations.

Wherefore, Complainant respectfully prays that a temporary restraining order be issued without notice and after notice a preliminary and final injunction be issued enjoining the defendants Gus Brown, Justice of the Peace, Precinct No. 1, Tarrant County, Texas, Sully Montgomery, Constable Precinct No. 1, Tarrant County, Texas, and Dusty Rhodes, Sheriff of Tarrant County, Texas, Mrs. E. V. McCord, Mrs. Sallie Morrow, O. B. Wood, F. A. Bailey, D. E. Barnhill, Della French, Anna Billings, G. W. Stover, Charles Bembrey, Walter J. Donnelly, J. E. Brown, J. A. Shellberg, Mrs. D. M. Hazelwood, Mrs. Henrietta Woodward, Mrs. Maud Gregory, Beatrice and Clyde Roberson, P. H. Rice, Ethel C. Cantley, Lessie Sam Johnson, J. C. Maloney, O. O. Black, M. E. Doye, A. E. Wolcott, R. M. Riley, J. W. and Mrs. J. W. Hughes, Mrs. Frankie Mae Page from:

(a) Further prosecution or issuing or causing to be issued any writ of restitution to evict any tenant in the cases mentioned in Paragraphs IV, V, and VI which are hereby incorporated herein as fully as if set out in full. The same being eviction suits pending on the docket of Gus Brown's Court, Justice of the
33 Peace, Precinct No. 1, Tarrant County, Texas, for and until the defendant-landlords and each of them have complied with the provisions of Section 6 of the Regulations for Hotels and Rooming Houses, and all of the provisions therein contained and required in order to evict a tenant and until they have the required grounds of eviction and until they have given the required notice prior to the filing of suit, or for and until they have filed a petition to secure a certificate of eviction or if they have a certificate of eviction they be required to comply with the provisions of said certificate of eviction as issued by the Area Rent Director of the Fort Worth Defense Rental Area.

(b) Issuing any process to enforce any judgment or issuing or causing to be issued any writ of restitution in the above styled cases mention' in Paragraphs IV, V, and VI, all being eviction suits in Gus Brown's Court, Justice of the Peace, Precinct No. 1, Tarrant County, Texas, for and until a valid judgment has been secured in each of the said cases and for and until the provisions of the "Act" and Rent Regulations for Housing have been complied with.

The Complainant further prays that all costs of suit be taxed against the defendants and for such other and further relief to which the Complainant herein may be entitled.

W. S. Margowski,
W. S. MARGOWSKI,
Attorney for the Office of Price Administration, Fort Worth Club Building, Fort Worth 2, Texas.

34 [*Duly sworn to by H. Edward Johnson; jurat omitted in printing.*]

35 In United States District Court

Amended motion for preliminary injunction

Filed August 7, 1946

To the Honorable Judge of said Court:

The Price Administrator, complainant herein, respectfully shows to the Court that the defendants have violated the Rent Regulations for Housing and the Emergency Price Control Act of 1942 as amended by the Emergency Price Control Act of 1946 as more fully set forth in the verified First Amended Complaint filed herein and moves the Court for a Preliminary Injunction, after notice of hearing to the defendants, enjoining, requiring, and restraining the defendants and each of them from:

(a) Further prosecution or issuing or procuring the issuance of any writ of restitution in the following described cases, to wit:

Docket No.	Parties	Filing date	Address
11464	Mrs. E. V. McCord vs. Jack Childress	July 19	2119 Oakwood.
11466	Mrs. Sallie Morrow vs. Miss Merrell Burnam.	July 20	3408 Jennings.
11467	O. B. Woods vs. Paul Courtney	July 20	1001 E. Arlington.
11468	F. A. Bailey vs. Jack Fletcher	July 20	3538 Avenue M.
11470	D. E. Barnhill vs. J. C. Nicholson	July 22	3304 Ryan Avenue.
11471	Della French vs. B. N. Carrold	July 22	927 College Avenue.
36 11473	Anna Billings vs. Carlisle Carlitz		2025 Pearl.
11474	C. W. Stover vs. Walton Parker	July 23	1308 So. Main, North, 3 room apartment.
11475	Charles Bembrey vs. Leroy Williams	July 23	413 E. 6th Street, 1 room.
11477	Walter J. Donnelly vs. W. P. Lindsey	July 23	Route 5, Box 197.
11478	J. E. Brooks vs. O. W. Turmon	July 24	2361 S. Riverside Dr.
11479	J. A. Shellberg vs. W. M. Manor, Jr	July 24	3405 Pentacost.
11480	Mrs. D. M. Hazelwood vs. R. M. Bartlett.	July 24	817 Porter.
11481	Mrs. Henrietta Woodward vs. Mrs. Lock Wicker.	July 24	501 E. Belknap, SE., Downstairs.
11482	Mrs. Maud Gregory vs. C. T. Meroney	July 24	1721 College, Upper, North apartment.
11483	Beatrice and Clyde Roberson vs. Lela Ward.	July 24	600 E. Annie.
11484	P. H. Rice vs. M. F. Newman	July 24	2701 W. 26th St.
11485	Ethel Cantley vs. Charlie Burns	July 25	3004½ Harding, NW, Upper room.
11486	Jessie Sam Johnson vs. Jimmie Wright	July 25	1006 So. Jennings Ave., N., Downstairs Apt.
11487	J. C. Maloney vs. Mary Hemphill	July 25	3821 W. 6th St.
11488	O. O. Black vs. James L. Bunnell	July 25	1024 Penn St., Upper, South Apt. 93.
11489	M. E. Dove vs. Carl Phillips	July 25	1127 Cambridge, 1 room.
11490	A. E. Wolcott vs. F. Preston	July 25	2324 N. Hempshire Blbd.
11439	R. M. Riley vs. Robert Ladd	July 22	2307 Lewis.
11372	J. W. and Mrs. J. W. Hughes vs. J. T. and Hazel Andrews.	July 8	1316 Travis Avenue.
11439	Mrs. Frankie Mae Page vs. E. B. and Mrs. E. B. Gregg.	July 16	1420 or 1424 W. Rosedale St.

37 That all of the above cases are eviction suits pending on the docket of Gus Brown, as shown above, who is Justice of the Peace, Precinct No. 1, Tarrant County, Texas. That the

defendants herein and particularly the defendants who are parties-plaintiff in the above suits, be restrained from further prosecution, or trial, or issuing or procuring the issuance of any writ of restitution as aforesaid for and until each of them complies with the Rent Regulations for Housing, or until each of them requires that the parties in each of the respective cases comply with the Rent Regulations for Housing and all provisions therein contained and required in order to evict a tenant, and particularly there exist the required grounds for an eviction under the Rent Regulations. That the required notices, prior to the filing of the suit, and all other requirements of Section 6 of the Rent Regulations for Housing be met. That in the cases where applicable a certificate of eviction be required and issued by the Rent Director of the Fort Worth Defense Rental Area Office, and where said certificate has been issued that it be complied with.

(b) Issuing any process to enforce any judgment or from issuing a writ of restitution in any of the cases above described in subparagraph (a), or the enforcement of any writ of
38 restitution as to the said cases pending in Gus Brown's Justice Court for Precinct No. 1, Tarrant County, Texas.

Dated this 7th day of August A. D. 1946.

W. S. Margowski
W. S. MARGOWSKI,
Attorney for the Office of Price Administration, Fort Worth Club Building, Fort Worth District Office.

39 In United States District Court

Temporary restraining order

Filed August 7, 1946

The above matter came on to be heard by the Court this 7 day of August A. D. 1946, and thereupon was presented to me a verified First Amended Complaint praying for a temporary restraining order to be issued without notice and after considering said verified complaint the Court is of the opinion that a temporary restraining order should issue restraining the defendants and each of them from:

(a) Further prosecution or issuing or procuring the issuance of any writ of restitution in the following cases, to wit:

Docket No.	Parties	Filing date	Address
11464	Mrs. E. V. McCord vs. Jack Childress	July 19	2119 Oakwood.
11466	Mrs. Sallie Morrow vs. Miss Merrell Burnam.	July 20	3408 Jennings.
11467	O. B. Woods vs. Paul Courtney	July 20	1001 E. Arlington.
11468	F. A. Bailey vs. Jack Fletcher	July 20	3538 Avenue M.
11470	D. E. Barnhill vs. J. C. Nicholson	July 22	3304 Ryan Avenue.
11471	Della French vs. B. N. Carrold	July 22	927 College Avenue.
11473	Anna Billings vs. Carlisle Cafflitz		2025 Pearl.
11474	C. W. Stover vs. Walton Parker	July 23	1308 South Main, N.; 3-room apt.
11475	Charles Bembrey vs. LeRoy Williams	July 23	413 E. 6th St., 1 room.
11477	Walter J. Donnelly vs. W. P. Lindsey	July 23	Route 5, Box 197.
11478	J. E. Brooks vs. O. W. Turmon	July 24	2361 So. Riverside Dr.
11479	J. A. Shellberg vs. W. M. Manor, Jr.	July 24	3405 Pentacost.
11480	Mrs. D. M. Hazelwood vs. R. W. Bartlett.	July 24	817 Porter.
11481	Mrs. Henrietta Woodward vs. Mrs. Lock Wicker	July 24	501 E. Belknap, SE., Downstairs.
11482	Mrs. Maud Gregory vs. C. T. Meroney	July 24	1721 College, Upper, North Apartment.
11483	Beatrice and Clyde Roberson vs. Lela Ward.	July 24	600 E. Annie.
11484	P. H. Rice vs. M. F. Newman	July 24	2701 W. 26th St., Upper Room.
11485	Ethel C. Cantley vs. Charlie Burns	July 25	300½ Harding, NW.
11486	Lessie Sam Johnson vs. Jimmie Wright	July 25	1006 So. Jennings Ave., North, Downstairs Apt.
11487	J. C. Maloney vs. Mary Hemphill	July 25	3821 W. 6th St.
11488	O. O. Black vs. James L. Bunnell	July 25	1024 Penn St., Upper, South Apt. #3.
11489	M. E. Dove vs. Carl Phillips	July 25	1127 Cambridge, 1 room.
11490	A. E. Wolcott vs. F. Preston	July 25	3324 N. Hempshire Blvd.
11469	R. M. Riley vs. Robert Ladd	July 22	2402 Lewis.
11372	J. W. and Mrs. J. W. Hughes vs. J. T. and Hazel Andrews.	July 5	1316 Travis Avenue.
11439	Mrs. Frankie Mae Page vs. E. B. and Mrs. E. B. Gregg.	July 16	1420 or 1424 W. Rosedale St.

That all of the above cases are eviction suits pending on the docket of Gus Brown, Justice of the Peace, Precinct No. 1, Tarrant County, Texas. That the further prosecution or the issuance of any writ in the above styled causes is restrained by this order for and until the defendants and each of them comply with the Rent Regulations for Housing or until the parties thereto have complied with the Rent Regulations for Housing and all of the provisions therein contained and required in order to to evict a tenant and until having the required grounds of eviction to exist and until giving in such cases the required notices prior to the filing of the suits, or for and until they have filed petitions to secure a certificate of eviction where required to be issued by the Director of the Fort Worth Defense Rental Area.

(b) The issuing of any process to enforce any judgment or from the issuance or carrying out the provisions of any writ of restitution in the above cases as cited in subparagraph (a), all being eviction suits in the Court of Gus Brown, Justice of the Peace of Precinct No. 1, Tarrant County, Texas.

And it further appearing to the Court that such practices will seriously injure the government; and it further appearing to the Court in accordance with Rule 65 of the Rules of Procedure of the

United States District Court from the verified First Amended Complaint filed herein, that immediate and irreparable injury, loss and damage will result to the complainant before notice can be served and a hearing heard herein in that the tenants will be evicted from the property by process issued on a void judgment,
in violation of the Rent Regulations for Housing and that
42 irreparable injury will result to the government in its
price control program and its efforts to stabilize rents in that any such eviction will violate the Rent Regulations for Housing and encourage like suits to be filed without complying with the Rent Regulations for Housing.

It is therefore ordered that a temporary restraining order forthwith issue enjoining the defendants and each of them, Gus Brown, Justice of the Peace in and for Precinct No. 1, Tarrant County, Texas, Sully Montgomery, Constable in and for Precinct No. 1, Tarrant County, Texas, and Dusty Rhodes, Sheriff of Tarrant County, Texas, Mrs. E. V. McCord, Mrs. Sallie Morrow, O. B. Wood, F. A. Bailey, D. E. Barnhill, Della French, Anna Billings, G. W. Stover, Charles Bembrey, Walter J. Donnelly, J. E. Brown, J. A. Shellberg, Mrs. D. M. Hazelwood, Mrs. Henrietta Woodward, Mrs. Maud Gregory, Beatrice and Clyde Roberson, P. H. Rice, Ethel C. Cantley, Lessie Sam Johnson, J. C. Maloney, O. O. Black, M. E. Dove, A. E. Wolcott, R. M. Riley, J. W. and Mrs. J. W. Hughes, Mrs. Frankie Mae Page, Tarrant County, Texas, from:

(a) Further prosecution or issuing or procuring the issuance of any writ of restitution or the carrying out of the provisions of any writ of restitution in the cases as shown in subparagraph (a) of page 1 and 2 herein which cases are incorporated here as fully as if set out in full. That the said cases are pending in the Court of Gus Brown, Justice of the Peace, Precinct No. 1, Tarrant County, Texas. That such further prosecution or issuing of any writ of restitution or carrying out the provisions of any such writ of restitution shall be enjoined for and until the Rent Regulations for Housing and all of the provisions therein con-
43 tained and required in order to evict a tenant have been complied with and for and until there exists the required grounds for eviction and for and until the required notices prior to the filing of the suit and for and until certificates of eviction duly signed by the Rent Director of the Fort Worth Defense Rental Area have been procured or have been duly complied with.

(b) Issuing any process to enforce any said judgments or from issuing any writ of restitution in any of the above described cases in subparagraph (a) page 1 and 2, all being eviction suits pending

in the Court of Gus Brown, Justice of the Peace, Precinct No. 1, Tarrant County, Texas.

This Temporary Restraining Order will remain in full force and effect until the 23 day of Aug. A. D. at 10 o'clock A. M. or until a hearing be had herein or until further orders of this Court.

Issued in the City of Ft. Worth, Texas, at 2 o'clock P. M., on the 7 day of Aug. A. D. 1946.

T. WHITFIELD DAVIDSON,
United States District Judge.

44 In District Court of the United States, Northern District of Texas, Fort Worth Division (At Dallas)

No. 1180 Civil

PAUL A. PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION

vs.

GUS BROWN, DUSTY RHODES, AND SULLY MONTGOMERY

Statement of facts on hearings of August 5th and 7th, 1946

Filed November 1, 1946

Be it remembered that on the 5th day of August A. D. 1946, before the Honorable T. Whitfield Davidson, the following testimony was taken in the above styled and numbered cause:

Appearances: Lowell D. Gibbons, Regional Enforcement Attorney, Dallas, Tex., W. S. Margowski, Enforcement Attorney, Forth Worth, Tex., appearing for the Plaintiff. J. L. Winters, Fort Worth, Texas, Lloyd Price, Fort Worth, Texas, Doss Hardin, Dallas, Texas, appearing for the defendants.

45 L. H. WRIGHT being first duly sworn, examined in chief by Mr. Margowski, testified as follows:

Q. State your name and position.

A. Area Rent Director of the Fort Worth Defense Rental Area, Office of Price Administration.

Q. How long have you held that position?

A. Since the office opened, in November 1942.

Q. The Defense Rental Area of Fort Worth covers what geographical area?

A. All of Fort Worth and Tarrant County.

Q. The rent regulations for housing effect what type of accommodations?

A. Dwelling accommodations only.

Q. You are still rent director, are you?

A. Yes, sir; I am.

Q. Have you made a search of your office with reference to the cases listed in the complaint, Mr. Wright, for the purpose of determining in which ones certificates of eviction have been issued?

A. Yes, sir.

Q. Do you have those files with you?

A. I don't know whether I have all of the files or not, I think it is in the brief case.

Q. Well, if you will get it. You have searched your
46 office and you find how many cases in which certificates of eviction had been issued?

A. Eight, I believe, here, which I have.

Q. Can you give them to me according to the description of the property?

A. Yes, sir; the first one is 2407 Lewis Street.

Q. You call them certificates of eviction; who issued the certificates?

A. Our office.

By Mr. MARGOWSKI:

Q. The Rent Director does, doesn't he?

A. Yes, sir.

Q. 2407 Lewis Street, a certificate of eviction was issued when?

A. It was issued on June 4, 1946.

Q. And what was its provisions with reference to the time that the landlord could, after that date, pursue his remedies in the local court?

A. Action to Remove the Tennant shall not be Commenced Sooner than November 13, 1946.

Q. And that is on 2407 Lewis Street?

A. Yes, sir. Mr. L. M. Riley was the Petitioner, and the tenant was Mr. Robert Ladd.

Q. The next property in which Certificate of Eviction was issued?

A. 3304 Ryan Avenue, Fort Worth, Texas, Mr. D. E.
47 Barnhill was the petitioner.

Q. When was a certificate issued?

A. On May 6, 1946.

Q. What was its provision with reference to the time after which the landlord could pursue his remedies in the local courts?

A. Action to remove and evict tenant should not be resumed until July 24, 1946.

Q. What is the next case in which a certificate was issued?

A. The petitioner was Anna Billins, 2025 Pearl Avenue, Fort Worth, Texas.

Q. When was the certificate issued?

A. On June 20, 1946.

Q. What was its provision with reference to the time after which the landlord could pursue his remedy in the local court?

A. December 7, 1946.

Q. What is the next case in which a certificate was issued?

A. Mr. Clyde Robertson, petitioner, property located 600 East Annie, issued on May 20, 1946.

Q. The certificate was issued when?

A. May 20, 1946.

Q. And its provisions with reference to when the landlord could pursue his remedies in the local court, after what date?

A. After October 30, 1946.

Q. And the next case in which the certificate was issued?

A. 1316 Travis Avenue, Fort Worth, Texas, petitioner
48 John W. Hughes, and that was issued May 29, 1946. Action to evict shall not be commenced sooner than November 21, 1946.

Q. What is the next case?

A. That is all I have.

Q. Now with reference to the other cases specified and listed here, Mr. Wright, you have searched your records, have you not, with reference to the properties involved?

A. Yes, sir.

Q. Do you, on any of those suits, have any notice from the landlord stating the grounds of eviction before the suit was filed in the Justice Court on any of those other cases?

A. They have not been received by our office.

Q. On none of them?

A. No, sir.

Q. Do you have any notice received in the Rent Office on any of those cases at the time the suit was filed, specifying the court in which it was filed, the name of the parties, and the grounds of eviction?

A. No.

Mr. MARGOWSKI. That is all.

Cross-examination by Mr. WINTERS:

Q. Mr. Wright, by operation of Law, the OPA terminated as of June 30, 1946; isn't that correct?

Mr. MARGOWSKI. That calls for a conclusion of law.

49 The COURT. I think that is not a matter of proof from the witness, but I assume that counsel will know the date, and that the record might be permitted to show, by stipulation.

Mr. WINTERS. May we let the record show that is the date?

The Court. If it is the correct date, and there is not any controversy about it.

Mr. Margowski. There is a serious controversy about it. It is certainly questioned.

The Court. All right; I will hear the testimony of the witness, but this witness can only testify to what he knows as a fact, and he cannot draw legal conclusions.

Mr. Winters. Mr. Wright, after June 30, 1946, tell His Honor whether or not you, as Rent Director of the Fort Worth Defense Rental Area, made any attempt to enforce the Rent Regulations.

Mr. Margowski. I object to that; that is a matter that calls for a conclusion and an opinion of the witness.

The Court. It is an injunction matter, and I feel that it takes a pretty wide range—I will permit it.

A. Our office has never been closed.

Q. I didn't ask you that question. I asked you whether or not you, as Rent Director of the Fort Worth Defense Rental Area, after June 30, 1946, made any attempt, personally, to enforce the rent regulations?

50 A. Yes, sir; I did.

Q. What attempt did you make?

A. By telling various persons who called at the office or by telephone what the rent regulation was.

Q. I will ask you whether or not you, as rent director, if you had any conversation with the defendant Gus Brown in this case, concerning your enforcement of the rent regulations, after June 30, 1946?

A. I don't think I talked to Gus Brown, for possibly two or three months, until a week ago last Friday.

Q. After the rent regulations were reinacted, is that right?

A. That is correct.

Q. You knew that after June 30, 1946, that eviction suits were being filed in the Justice Court, without giving your office any notice of them, didn't you?

A. I was informed of it, I didn't know.

Q. After you were informed of that, did you make any investigation to determine whether or not that was true?

A. Whether or not they were filing them?

Q. Without giving your office any notice?

A. I was informed that was true. I didn't ask Mr. Brown anything about it. Does that answer the question?

Q. No, but I will accept it. Did you, or any of the members of your staff—by the way, when did you learn that the Justice

51 of the Peace Courts were accepting forcible entry and detainer suits without complying with your office requirements?

A. I don't remember.

Q. Was it in the first part of July?

A. Well, it was after the first of July, it was after June 30.

Q. After June 30?

A. Yes, sir.

Q. You knew the newspapers of Tarrant County carried an account of eviction suits being filed without filing any notice with the OPA office in Tarrant County?

A. What was the question?

Q. I say you, as rent director, knew through the newspaper articles of Tarrant County, that forcible entry and detainer suits were being filed in the Justice Court without giving your office any notice?

A. That is correct.

Mr. WINTERS. That is all.

Cross-examination by Mr. PRICE:

Q. Just one or two questions. You say a certificate of eviction—now, you issue, or purport to issue what is called an eviction certificate in your office?

A. Yes.

Q. Now, have some of those you mentioned provided it would go into effect in November—do you mean by that, that in
52 certain cases you will issue an eviction certificate, and say it will not take effect for six months, is that it?

A. That is correct.

Q. You issue it now, but it is not to be effective until six months have elapsed?

A. That is what the regulations say.

Mr. PRICE. That is all.

EXAMINATION

Q. What is the substance contained in one of these certificates, Mr. Wright? Do you have one with you?

A. Yes, sir; here is one right here.

Q. Now, ordinarily, who would apply for it in these cases, the landlord?

A. It may be a purchaser of the property.

Q. One interested in the ownership, or the tenant?

A. Yes, sir.

Q. The tenant presumably would not apply, because if he didn't want to stay, he would get out?

A. That is correct.

Q. The purpose of the certificate was to get the OPA sanction and eviction proceeding in the court?

A. That they may pursue their remedies under the local courts; yes, sir.

Mr. MARGOWSKI. We offer in evidence Section 6 of the
53 Rent Regulations for housing.

(Said instrument read by Mr. Margowski.)

H. EDWARD JOHNSON being first duly sworn, examined in chief by Mr. Margowski, testified as follows:

Q. State your name, please sir?

A. H. Edward Johnson. Area Rent Attorney, in the Fort Worth Division.

Q. How long have you held that office?

A. This last time since about June 8, this year.

Q. You had previously been employed in the same position, had you, for what period of time?

A. From July 4, 1944 until about May 1945, nearly a year.

Q. Mr. Johnson, on or about July 25, did you have occasion to go to Gus Brown's court and discuss with him certain pending eviction suits in his court?

A. I believe I discussed it with him on the Saturday following the 25th, which was the date of the President signing the Act, I believe it was on Saturday.

Q. Did you have a discussion with him with reference to a particular designated case of Hughes, 1316 Travis Avenue?

A. Who were the parties in that?

Q. Hughes versus Andrews.

A. Yes, sir, I discussed that case with him, as well as
54 some other cases.

Q. Now, in the course of that discussion, did you tell him that the price control Act had been renewed and made effective as of July 30, 1946?

A. Yes, sir, I advised him that.

Q. What was his reaction whether he would require compliance from that date on with reference to these twenty-nine or thirty cases pending in his court?

A. His thought in the matter was, in fact, his opinion, as he gave it to me, was that, whatever law the case was filed under at the time, whatever law was in existence at the time, he would continue with that procedure prescribed by that law. In other words, having some of these suits, or all of these having been filed after July 1, it was his thought that the Emergency Price Control Act, having expired, that he would continue to comply with only the State Law, with reference to those eviction suits.

Q. Did you call his attention to the fact that the Emergency Price Control Act of 1946, when it was renewed, was made effective; June 30, 1946?

A. Yes, sir.

Mr. WINTERS. We object to that, that is the point in this case, that involves a question of law.

The COURT. I assumed that would be the ultimate controversy; but if counsel desires to make a record, I will permit it.

55 Q. Did you call his attention to the fact that the law, when renewed, in 1946, provided to be effective as of June 30, 1946?

A. Yes, sir.

Q. What did he say to you with reference to those pending suits in his court?

A. In his opinion he stated that the suits had been filed when there was no OPA in effect, and had been filed in compliance with the state law as to notice, and he intended to carry those suits on through.

Mr. WINTERS. That is all.

Cross-Examination by Mr. HARDIN:

Q. Mr. Johnson, have you read the Rent Control Act of 1942?

A. Yes, sir.

Q. Do you know when it was enacted?

A. You mean the first act?

Q. The first one?

A. I don't recall.

Q. Then when was the last one, the one that expired?

A. When was it enacted?

Q. Yes?

A. I don't recall the date of that.

Q. Do you know when it expired?

56 A. As I recall, it provided for expiration as of June 30, 1946, unless it was renewed.

Q. Unless renewed, is that correct?

A. Generally, as I understand, there was an expiration date of June 30.

Q. And being an attorney for the Rent Control Area, do you know whether or not it was renewed by Congress on June 30, 1946?

A. I understand the Act was not signed until about the 25th of July.

Q. It was not signed until July 25?

A. I believe that is correct.

Q. Then there is a period from June 30 to July 25, when you had no OPA.

Mr. MARGOWSKY. That is the question involved.

The COURT. That is a legal question, that the court will have to decide.

Q. Did you take any Acts during the period from June 30, to July 25, 1926, to evict anyone?

A. You mean——

Q. To resist the eviction of anyone?

A. No, sir.

Q. Did you file any suits in the Federal Court for the overcharging for automobiles and such as that?

A. I was not interested in those automobile cases, just in
57 the rent matter.

Q. During that period from June 30 to July 25, did you file any injunction suits restraining any eviction orders during that period?

A. No.

Q. Now, these cases that you have told the court about are cases that were disposed of by an agreed judgment in Gus Brown's court between June 30 and July 25, is that correct?

A. I only mentioned one case. I only spoke to him about all of these cases, and what he proposed to do with them, with reference to whether or not he would issue a writ of restitution in them, or whether he would comply with our requirements as to notice and grounds for those eviction suits. I discussed several cases with him.

Q. During that conversation with Gus Brown, he told you that several of the cases were already reduced to judgment, did he not?

A. That is right.

Q. And you asked him to set those back up, set all those judgments aside and grant new trials in them, did you not?

A. No, I asked him not to issue any writ of restitution in those cases, not to do anything to carry out that judgment, unless, in those particular cases, the landlord had complied with the requirements of our regulations under Section 6, both as to grounds and notice.

58 Q. And you told him at that time if the landlord had not complied with all of the regulations of the OPA, that he was not entitled to an eviction?

A. Well——

The Court. The court will stand at recess for five minutes.

Cross-examination by Mr. Price:

Q. Just one or two questions: You are acquainted with the names and the numbers of these twenty-nine suits that are named in your Bill of Complaint?

A. Yes, sir.

Q. You took them from the docket of the Justice Court of Precinct 1, did you not?

A. That is right.

Q. If you know, Mr. Johnson, was there any suit pending in any other court—in the federal court—by any of these parties, as Plaintiffs and Defendants, on the subject matter, in any federal court?

A. As far as I know, there was not.

Q. As a matter of fact, there was not any suits pending at all between these parties in any federal court, about the eviction?

A. I know of none; however, I didn't check that particular.

Q. To save time, Mr. Johnson, just lumping them to-
59 gether, these suits that you have listed here, as I understand it, were filed between June 30, 1946——after June 30, 1946, and before the date of the 25th of July?

A. That is correct. There are some of them beginning with 11,485, it is 11,486, 11,487, 11,488, 11,489, 11,490, were filed on the 25th of July.

Q. Some of them?

A. Those I gave the case number of.

Q. Have you the Donley suit?

A. Donley vs. Lindsley, 11,477, was filed on the 23rd day of July, and judgment entered on the 30th of July.

Mr. PRICE. That is all.

JAMES ARTHUR PHILLIPS being first duly sworn, examined in chief by Mr. Markowski, testified as follows:

Q. State your name?

A. James Arthur Phillips.

Q. What is your profession?

A. I am a lawyer.

Q. Where are you practicing?

A. Fort Worth.

Q. Are you interested in any of these suits pending in Gus Brown's court?

60 A. Yes, sir; in Riley versus Ladd, I represent the Defendant.

Q. You represent the Defendant?

A. Yes, that is right; Robert Ladd.

Q. Did you have occasion to have conversation with Gus Brown on or about July 25?

A. I can give you the exact dates, the suit was filed against my defendant, forcible entry and detainer in Gus Brown's court on the 22nd of July, and he consulted me about the case shortly thereafter, and I waited until after the OPA law was reenacted on the 25th of July, then on the 26th or 27th, the Act was re-enacted, I went down to Judge Brown's court, and asked him what action he

was going to take about those cases that had been filed in his court during the interim between the expiration on June 30 and the beginning of the new act on July 25. He said that being as they had been filed during that interim period, he was going to go ahead and allow them to proceed under the local law, without regard to the OPA requirements or provisions.

Q. Thereafter, was there any further action taken in your suit?

A. Yes, sir; our appearance day was the 29th, and on the 29th, we were in court ready for trial. I talked it over with the attorney for the plaintiff, and I told him we admitted we didn't have any defense under the local law. That our only hope was relying on the OPA coming to our aid, so to save time and money between both parties, we agreed on that day, July 29, we
61 would enter judgment under the local law against my client, and to give the OPA opportunity to get the question settled in the Federal Courts. I was given fifteen days by the judge, within which the Writ of Restitution would not be executed. I had talked to the OPA previously about it.

Cross-examination by Mr. WINTERS:

Q. The judge, as you know, and the law, can only extend the time of hearing a suit?

A. That is correct.

Q. Any agreement you had extending the date for process to issue, was with your adverse counsel, wasn't it?

A. That is correct.

Q. Judge Brown entered the judgment as you and your adversary agreed upon, isn't that correct?

A. That is correct. I told him we had made an agreement, and he agreed to have the writ of restitution withheld for fifteen days.

Q. He agreed to follow your agreement there in court?

A. Yes, sir; and our agreement was based upon the termination of the OPA restitution.

62 GUS BROWN, being first duly sworn, examined in chief by Mr. Markowski, testified as follows:

Q. State your name and position?

A. Gus Brown, Justice of the Peace, Precinct No. 1, Place 1, Tarrant County.

Q. You have had a list of these cases which were alleged to be pending in your court. Is that a full list of the cases pending in your court of eviction matters?

A. That is the list that you people took off of my court. I don't know. I checked the cases to see if I had them, and I did. There are more I did not check.

Q. Do you have the court records with you with reference to these cases?

A. Yes, sir; right there.

Q. Starting with the first case listed, 11,464, McCord v. Childress?

A. Yes, sir.

Q. When was that filed?

A. The 19th day of July.

Q. Were any grounds stated by the landlord for evicting that tenant?

A. Nothing but under the forcible entry and detainer act.

Q. No grounds stated under the regulations?

A. None of them.

63 Q. You mean we can dispense with going through all of these cases?

A. All these cases I have here are cases that have been filed during the interim of the OPA.

Q. In none of them are there any grounds given by the landlord?

A. They did not, under the OPA regulations.

Q. In these cases, no ground existed and no notice given by the landlord to the tenant in any of these suits?

A. This notice was given in all suits.

Q. I mean notices under the OPA.

A. None of them were given under the OPA. I believe I cited some cases that notices had been given to the OPA; that was eviction notices. Those were notices these owners had already given OPA, when the OPA went out, they proceeded under local law.

Q. That is, in which the Certificate of Eviction had been issued?

A. That is correct.

Q. And during the period from June 30 to July 25, they file their suits complying only with the local law?

A. That is right.

Q. Now, in the other cases, not including those six, there was no notice given of ground of eviction under Section 6 of the Rent Regulations?

A. Not that I know of.

64 Q. They should allege it in their complaint?

A. They have always, under OPA rules and regulations, during the life of the OPA, they have been doing that since July 26.

Q. During this interim they did not.

A. I didn't require any.

Q. No notice was given to the Rent Office at the time of the filing of the suit?

A. No.

Q. In order to expedite this matter, as to these suits and determine what the condition of them was on your docket of July 25, can you let us know what the condition with reference to 11,464 was?

A. This case was set on July 19, made returnable on the 26th. The attorneys for both sides appeared in this case, and I believe Mr. Johnson appeared as Amicus Curiae, to the court. That case was passed until August 2.

A. What is that case?

A. 11,464.

Q. McCord versus Childress?

A. That is correct.

Q. That was passed until August 2?

A. Yes, sir.

Q. Now, 11,465, Whatley v. Leslie?

A. Those people moved, had been moved since the second day after the case was filed.

65 Q. They moved before July 25?

A. Yes, sir. This case was filed on the 19th day of July and the people moved on the 21st.

Q. Has that suit since been dismissed, or not?

A. No, sir.

Q. It is still pending?

A. I made a notation on my docket, default judgment, on the 26th of August, because the defendant failed to appear. Then I was notified by Mrs. Whatley that the people moved the second day after the suit was filed.

Q. In 11,466, Moro versus Vernon, what was the condition of that case on July 25?

A. Do you want to know the date the case was filed?

Q. Yes?

A. That case was filed on the 20th day of July, returnable on the 29th. On the 29th of July, the plaintiff and the defendant came into my court and had an agreed judgment, and in that agreed judgment, on July 29, they asked no writ issue before September 1, 1946.

Q. And as of July 25, 1946, that judgment had not as yet been rendered?

A. The judgment is entered on the 29th day of Ju'y.

Q. On the day of July 25, it had not been rendered as of July 25, it was after July 25?

A. Well, it was made returnable on the 29th of July.

66 Q. With reference to 11,467, Wood v. Courtney, that was filed what date?

A. Made returnable on the 26th, filed on the 20th, and made returnable on the 29th day of the month.

Q. On the 25th, had any judgment been entered in that suit?

A. No, sir; these people appeared in court on July 29, had an agreed judgment, and asked that no writ issue before August 12, 1946, and all rent be paid by rental agreement.

Q. That was on the 29th?

A. Yes, sir.

Q. Now, 11,468, Bailey versus Fletcher, that was filed what date?

A. That was filed July 20, made returnable on the 29th. That, also, was an agreed judgment, no writ to issue before September 1, 1946.

Q. When was that entered?

A. July 29.

Q. So on July 25, that judgment had not as yet been entered?

A. That is correct.

Q. Barnhill, No. 11,470?

A. You have Riley and Robertson, Ladd case, in front of that.

Q. Which one is that?

A. Filed on the 20th, made returnable——

Q. That is Riley versus Ladd?

67 A. Yes, sir.

Q. What is the number?

A. This is case No. 11,469, made returnable on the 29th, that is the case Mr. Phillips was in, and it showed on that date there was an agreed judgment rendered, and no writ to issue before August 13.

Q. On July 25, that judgment had not been entered?

A. That is correct.

Q. Now, the next case, 11,470, Barnhill versus Nicholson?

A. That case was filed July 22, and returnable on the 29th. In that case, an agreed judgment, no writ to issue until August 10, 1946.

Q. So as of July 25, the judgment had not been rendered?

A. The judgment had not been rendered. They are only made returnable every seven days by law.

Q. As of July 25, the judgment had not yet been rendered. 11,471, French versus Carroll?

A. That was filed on the 22nd, and returnable on the 29th.

Q. What was its condition?

A. Well, there was an agreed judgment entered into that case, and no writs to issue before August 10, 1946.

Q. That judgment was entered what date?

A. I have the original petition filed in that particular case, I will be glad to see whether the lawyers stated the OPA regulations had been complied with.

68 Q. All right.

A. Only under local law.

Q. In French versus Cagroll, what was the date of the judgment?

A. 29th day of July.

Q. 11,472, Murf versus Johnson?

A. They have been moved ever since the date the case was filed. It showed they moved on the 29th.

Q. They moved on the 29th?

A. Yes. Dr. Murf called me and told me the people moved the next day.

Q. 11,473, Millings, versus Garletts, when was that filed?

A. On the 22nd day of the month, and service was made returnable on the 30th. The case was heard on the 30th, agreed judgment entered, no writ until October 30, 1946.

Q. So no judgment had been entered prior to July 25?

A. That is correct.

Q. 11,474?

A. That was a default judgment.

Q. That was filed on July 23, what was the date of the judgment?

A. The date of the judgment was on the 30th.

Q. Now, Mayberry versus Williams, No. 11,475, that was filed when?

A. That was evidently filed on the 23rd, and there was a

69 default in that.

Q. On what date was the judgment rendered?

A. Filed on the 23rd, entered on the 30th.

Q. 11,476, Yarbor versus Jackson, when was that filed?

A. I see here they moved on the 30th. Filed on the 23rd, and returnable and defaulted on the 30th, the people had moved.

Q. Donley versus Lindsey?

A. Yes, sir.

Q. That was filed on the 23rd, when was the judgment entered?

A. On the 30th, no writ issued until thirty days from date. That was by counsel.

Mr. PRICE. I want to introduce the formal written judgment itself. Do you have it?

A. Yes, sir. Do you want to read the judgment?

Mr. PRICE. Well, I prepared the agreed judgment?

A. Yes, sir; this is the judgment.

Mr. PRICE. Well, we will just consider it in evidence.

Mr. MARGOWSKI. We have no objection.

Mr. PRICE. We will consider it in evidence. It is a full judgment, isn't it?

A. Yes, sir.

Mr. PRICE. Signed by both sides?

A. Yes, sir.

By Mr. MARGOWSKI:

70 Q. That was entered on July 30, is that correct?

A. That is correct.

Q. 11,478, Browning versus Thurman?

A. J. E. Brooks versus Turmon. That case is still pending on my docket, by injunction out of this court.

Q. That is still pending?

A. Yes, sir.

Q. No. 11,479?

A. The same thing exists.

Q. Hazelwood versus Bartlett?

A. The same thing exists.

Q. Woodward versus Walker?

A. The same thing.

Q. Gregory versus Maroney?

A. The same thing.

Q. Robertson versus Ward?

A. The same thing.

Q. By "the same thing," you mean it is pending on the docket of your court?

A. The balance of these cases are pending on my docket.

Q. Rice versus Newman?

A. The same thing.

Q. Kendall versus Burns?

A. The same situation.

Q. Johnson versus Wright, No. 11,486?

71 A. That case is up on appeal.

Q. That is on appeal?

A. Yes, sir I believe I made a notation on my list, one or two of them that had gone up to the county.

Q. 11,486, Johnson versus Wright, is on appeal?

A. Yes, sir.

Q. Maroney versus Hemphill?

A. That case is pending.

Q. Black versus Bunell?

A. That case is pending.

Q. Dodd versus Phillips?

A. That is pending.

Q. Walcott versus Prescott?
A. That is pending.
Q. With reference to Hughes versus Andrews?
A. No. 11,372. You had three cases that you read to the court.
Q. 11,372 is Hughes versus Andrews, when was that filed?
A. That was filed on the 5th day of July, made returnable on the 12th.
Q. Was any judgment entered in that case?
A. Yes, sir; judgment was rendered on the 12th.
Q. On what day?
A. On the 12th day of the month, returnable on the 12th,
72 and judgment entered on the 12th.
Q. Now, with reference to the other case?
A. That was judgment for the plaintiff, it was not for the defendant.
Q. Now, in the case of Gregg versus—property, 1,420 residents, Rosedale, when was that—Page versus Gregg?
A. That was filed the 16th day of July, made returnable on the 23rd.
Q. Was any judgment entered?
A. Yes, sir; judgment was entered and the people agreed not to move out until the 29th.
Q. That is July 29?
A. Yes.
Q. With reference to that suit that you state, Johnson versus Wright, on appeal, when was the judgment entered in that case?
A. That is 11,486?
Q. 11,486?
A. That was entered on July 25.
Q. July 25, filed on the 25th, and judgment entered on the 25th, and an appeal taken?
A. No, wait a minute—that is correct—I would like to explain to the court what happened. This young man, Jimmy Wright,
did not want to stay in these old people's home and both the
73 plaintiff and the defendant came into my court and they had decided, in order to get the place to live, that they would go also and give a written notice in court, and they turned around and filed suit in court, then entered a judgment for immediate possession, then got out a transcript of judgment so he might take it to the highest authority, in order to get a place to move to. They came back later and gave notice of appeal, and that went up to the county court at Law No. 2.

Cross-examination by Mr. WINTERS:

Q. How long have you been Justice of the Peace over that court?

A. I am serving my eighth year.

Q. You have just been reelected without opposition?

A. Yes, sir.

Q. Judge, I will ask you during the time OPA was in effect, if it is not a fact that you attempted to cooperate and comply with the OPA to the best of your ability?

A. I didn't get the first part of your question?

Q. I asked you if it is not a fact, when OPA was in existence, you cooperated with the OPA as long as the Rules and Regulations were in existence?

A. Yes, sir; in every respect.

Q. On June 30, 1946, the OPA law expired?

A. That was the information I got out of the newspaper.

Q. Now, under the local law, these eviction suits are
74 filed under special statutes known as forcible entry and detainer suits?

A. That is correct.

Q. I will ask you whether or not, if prior to the commencing of the eviction under the local law, if the law does not require reasonable notice to be given to the tenant?

A. No, sir; it says a demand must be made in writing.

Q. A demand for the premises?

A. Before filing suit, a demand must be made in writing.

Q. When they file under the special laws of forcible entry and detainer, the issue in question is to get who has the superior right of possession?

A. That is correct.

Q. These cases that you have outlined before this court, were cases that were commenced before your court, that is, a case had been filed by the plaintiffs, process had been issued to the defendants, and they were commenced in your court, and they were commenced in your court and ready for determination during this period that the OPA was not in existence, is that right?

A. That is correct.

Q. I will ask you whether or not anyone from the OPA, Mr. Wright, Mr. Markowski, Mr. Johnson, or anyone came to your court during this interim period and advised with you as to how these suits should be filed and tried?

75 A. They did not.

Q. Tell this court when was the first time that you heard from any official of the OPA, coming to your court, asking you and instructing you, and advising you about the way you should run your court?

A. On the 25th day, on Friday, they came to my court on Saturday.

Q. That is the first time you saw them?

A. Yes, sir.

Q. That was the day after the OPA law was enacted?

A. That is correct.

Q. Were you furnished with any copy of the Act, or had you seen the Act, or what it provided, or did you know what law the Congress provided at all?

A. I haven't seen it yet.

Q. I will ask you whether or not, since this injunction has been served on you, if you have not responded and obeyed it and respected it in every respect?

A. Yes, sir; and I will, as long as we have it.

Q. What is the court deposit for a litigant to file a forcible entry and detainer suit in your court?

A. $6.00.

Q. In your conversation with Mr. Johnson in your court, on the 26th day of July, 1946, did he or not tell you that every Act that you had done in your court was void if notice had not
76 been furnished to the OPA with reference to these eviction suits?

A. He tried to construe the law that way; yes, sir.

Q. Did he tell you during the course of the conversation with you that you would have to set aside the old judgments, and grant new trials, and instruct these litigants to give notice to the OPA?

A. I believe that he said that in practically those words, except he did not make any comment. He merely stated he thought it was the law. I said, "Well, me and you have different opinions, I will construe my law one way, and you construe yours the other, and we will let the court construe both of our laws."

Q. In other words, the only legal remedy you could pursue was the remedy of the local law when OPA was off?

A. That is the only law I had, and I didn't have any suits on the first day of July at that—I turned down nine cases that the other court took.

Q. When the President vetoed that act, you didn't know whether you would ever have another OPA?

A. No, sir; I didn't, and nobody else knew.

Q. You followed closely in the newspapers the conditions to the re-enacting of the law?

A. I think there was a few days, some little item in the newspapers about it. I wanted to be sure I would be within the law when the OPA came back, the last case I accepted was 4:30, they made their law effective in Texas at 5:05.

77 Q. During the interim, Congress was considering re-enacting the Price Control Law, there appeared in the paper, even from the most bitter opposition, that rent control should be continued?

A. I think so, and I am in favor of it.

Mr. PRICE. What has that to do with the legality of this matter? It is interesting, but I object to it.

The COURT. You can raise that in the argument on the law.

Q. You have complied with this strictly since it was issued by Judge Wilson?

A. Yes, sir.

Q. But you do propose to go ahead and carry out these suits under the State Law, if you should not be enjoined?

A. I propose to do exactly what this court tells me the law is, that I must do.

LOWELL L. GIBBONS being first duly sworn, examined in chief by Mr. Margowski, testified as follows:

Q. State your name?

A. Lowell L. Gibbons.

Q. What is your position?

A. Regional Rent Enforcement Attorney, Office of Price Administration.

78 Q. I hand you Plaintiff's Exhibit 1, and ask you to identify it if you can?

A. This is an interpretation, 6–VT, Evictions pending on July 25, 1946.

Q. Issued when?

A. Issued July 25, 1946, by the Office of Price Administration.

Q. And published where?

A. In the Federal Register, on the same day.

Mr. WINTERS. If Your Honor please, we object to Exhibit 1, for the reason that the same is some conclusion of some person, some printed matter, it is not signed by anyone, he says it comes out of the Office of Price Administration. I don't see how he can reach that conclusion when there is no statement on the exhibit where it comes from. It is a mimeographed copy of something. Certainly, it would not be binding on this court as to some interpretation some person made in Washington.

Mr. PRICE. I make the same objection. It seems to be somebody's interpretation, it would be self-serving. It is not in the guide or regulation or promulgation under the Act.

The COURT. Well, let it go in, and I will consider it the same as I would a brief.

Mr. MARGOWSKI. It is just introduced for the purpose of being an interpretation of the Office of Price Administration. It

79 has no binding effect on this court, but it is an interpretation of the Office as to these eviction cases. It is published in the Federal Register of July 25.

The COURT. I might ask at this time, as soon as you reach it, as to whether there is any controversy between counsel as to the effect of the reenactment of this law.

Mr. MARGOWSKI. That is where the whole controversy comes.

The COURT. All right.

Mr. MARGOWSKI. That is all. The plaintiff rests.

Mr. WINNERS. The defendant rests.

Mr. PRICE. I wanted to state, my client is not here, and I am familiar, I believe it is ethical for the lawyer to take the stand where he cannot prove certain things by somebody else.

The COURT. You might state what you want to show, and counsel might agree to it.

Mr. PRICE. It is in the nature of a fact, and I will be sworn if it is required.

Mr. MARGOWSKI. It will not be necessary.

Mr. PRICE. Briefly, Your Honor, it is this: This suit was filed by the Donleys prior to the reenactment of the new law after June 3. Incidentally, to save time right here, I don't think there can be any debate, Congress probably knew better than anyone else——

Mr. MARGOWSKI. If counsel is going to make his argu-
80 ment, we do object.

Mr. PRICE. I was just going to read this, but if you have any objection, I will not.

Mr. MARGOWSKI. No, we will read it.

Mr. PRICE. Getting back to the facts: After June 30, we filed this suit. They had been see-sawing about it, my client and the tenants, for several months. So the Lindsleys were served with Civil Notice. My associate handled the matter, except when we went up to take the agreed judgment. At any rate, the Lindsleys bought a lot, and begun to build their house. I went up with Mr. Atkinson to Judge Brown's court on the morning of June 30. Mr. and Mrs. Lindsley were there, and my client was there, and Mr. Cline, the lawyer for the Defendant, and I was there, and Mr. Atkinson. Mr. Lindsley said, "We want to get out, we have a house, it is not quite complete, but in a month's time, it will be finished, and we want to get out." So they paid three months rent at the OPA rent, fixed by the OPA, and they agreed to get out on the 31st of August. So, I went to the office and wrote a judgment to this effect, conforming to the Rules of the Supreme Court of Texas, signed by all of the lawyers, an agreed judgment, that the plaintiffs recover possession, and that the Writ of Restitution should not be served until August 31, 1946, and only in the event that they did not get out by that time. Now, those are the facts. There was no dispute about the rent. The ceiling

fixed by the OPA, the landlord received it, and they
81 paid it, and it was paid up to August 31, 1946. And the agreement in writing was signed by all parties, then entered as the judgment of the court, and proved up on July 30.

Mr. MARGOWSKI. Would you mind answering one question? At the time, and prior to the time this suit was filed, was any notice given to the tenant, stating the ground of eviction under the rent regulation?

Mr. PRICE. Now, it would be hearsay, I have the impression that Mr. Atkinson carried some kind of notice to your office, I couldn't say that for sure.

Mr. MARGOWSKI. At the time the suit was filed, was any notice given to the OPA office, stating the number of the case, the style of it, and the court in which filed, and the ground of eviction on which they sought to evict this defendent?

Mr. PRICE. I don't know, Mr. Atkinson is in another court today and could not be here.

Mr. GIBBONS. This was a stipulation of what happened. I want it understood there was an agreement.

Mr. PRICE. Yes, that was the ground in their regulation. You see what he read there, that is not the language of the statute, what he was reading this morning. That is promulgations. As I understand it, it is. Our ground was, that where the party wants to use the premises for his own personal use, that that is a ground for eviction.

Mr. MARGOWSKI. Was notice of that ground given to the
82 tenant?

Mr. PRICE. It was to the tenant, but whether the OPA was notified, I don't know. Mr. Atkinson attended to it.

Mr. MARGOWSKI. Mr. Wright testified he had not received any notice.

Mr. PRICE. Well, I don't know.

Mr. MARGOWSKI. That is all.

(After argument by counsel on the law of the case, the following statement was made by the court:)

Statement by the Court

The COURT. I have already indicated that I think the Officers of the Court, must go out of the case. I am going to hold this hearing open until August 7, at 2:00 o'clock in Fort Worth, and at that time, it will be the intention of the Court to adhere to the tentative opinion I have announced, that all judgments that were rendered prior to the 25th of July, will probably be upheld, all rendered after that time will probably be set aside, unless it was entered by the agreement of the parties.

Mr. MARGOWSKI. May it please the court, we have made application to file an amended motion in which the landlords in these suits will be made parties, and it will be almost impossible to get all of the landlords served prior to the date set.

The COURT. I have that in mind, and if an application is made for additional parties, I will continue the case as to those parties, but as to the officers of the court, I expect to
83 dismiss.

Mr. MARGOWSKI. Will the court continue in effect the temporary retraining order, for and until we can have the hearing in Fort Worth?

The COURT. Yes, I believe the court has entered an order to that effect.

Mr. MARGOWSKI. Until today.

The COURT. Then I entered another, extending it to 2:00 o'clock August 7.

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FORT WORTH, TEXAS,
August 7, 1946, 2:00 o'clock p. m.

Additional appearances: Irwing M. Gruber, Chief of the General Litigation Branch, Washington, D. C., appearing for the Government.

The COURT. We will take up the matter we had in Dallas Monday, at this time.

(After argument by counsel, the court made the following pronouncement:)

The COURT. I want to make this observation. We are all citizens of the same land. We are all officers of the same government. We are all seeking the best interests of those people who are amenable to the laws of our land, that being true, I am going to urge upon you, as enforcement officers, to hear the people who have the controversies, and to deal with them, and if by a postponement, the matters can be worked out, as in this Donley case, I think every one that can be worked out, by giving and taking on the part of counsel, of additional time, that that should be done; the case can be continued and the parties given a chance, that it may be done.

Sometimes we wonder why that there are so many people
85 who cannot get houses. It is just like people who cannot get jobs, they want a certain variety of jobs, and they want a certain quality of house. Many of these people who want houses, they had houses that they are not willing to go back to. I have heard it stated, on good authority, within one hundred miles of Dallas, there are six thousand vacant houses. I know one com-

munity myself where there are twenty-five vacant houses, but they are substandard houses; however, they are houses in which a great many of these people lived a few months or a few years ago, and the unwillingness to go back to those houses has created this emergency.

I think the enforcement of this law is one that should be accompanied by forebearance and tolerance, and the Office of Price Administration is, as the word "administrator" means, one to administer the affairs of this situation. Where you find a man that is unamenable to anything, bring him up to the judge and let him be spanked, but otherwise, let him run his own affairs.

Mr. GRUBER. That is the intention of the Administrator in all of these cases, to be fair in each case.

Mr. MARGOWSKI. Will the date be the 23rd of August?

The COURT. Yes, we will hear the cases on the 23rd of August, that is the date, at 10:00 a. m. Everything will stand just as it is until that date, and I will hear argument on it. My advance opinion is, if you did not have your judgment before the new law took effect, you cannot get it, if you did have it, the Court would be inclined to observe it.

86 [Reporter's certificate to foregoing transcript omitted in printing.]

87 In the United States District Court, Northern District, of Texas, Fort Worth Division

No. 1180 Civil

PAUL A. PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION

vs.

GUS BROWN ET AL.

Statement of facts on hearing of August 23, 1946

Filed November 1, 1946

Appearances: Irving M. Gruber, Chief, General Litigation, Washington, D. C., W. S. Margowski, District Office, Fort Worth, Texas, Louis A. Ross, District Office, Fort Worth, Texas, H. Edward Johnson, Area Rent Attorney, Fort Worth, Texas, for plaintiff.

Frank R. Graves, Fort Worth, Texas, for defendants, Mrs. Sallie Morrow, J. E. Brooks, O. O. Black, et al., and Gus Brown, Justice of the Peace, Fort Worth, Texas.

Ward Bailey, Fort Worth, Texas, for the defendant, J. A. Shellburg.

Dave Miller, for defendant Anna Billings.

Hal S. Lattimore, Fort Worth, Texas, for defendant F. A. Bailey, et ux.

Joe Ore, Fort Worth, Texas, for defendant Mrs. Maud Gregory.

Frank Crumley, for defendant Mrs. Frankie Page.

88 E. L. Gilbert, Fort Worth, Texas, J. E. McLemore, Jr., Dallas, Texas, Eric Eades, Jr., Dallas, Texas, appearing as amicus curiae.

Be it remembered that on the 23d day of August A. D. 1946, came on for further hearing, before Honorable T. Whitfield Davidson, Judge, the above styled and numbered matter:

89 PROCEEDINGS

The COURT. Now, the case for which the court has convened principally here this morning is the one of Paul A. Porter, Administrator, versus Gus Brown and others.

We indicated when we were here, I believe, on the 7th, the disposition that we would make with reference to the then defendants, that is, the state officers. The case was held open until the parties at interest could be brought before the Court, and it was re-set for today.

If any of the parties defendant wish to be heard further on the subject, we would hear you, or, we will indicate certain general principles that we think will control the case, and you may endeavor then to bring yourselves within it.

We have just been favored with a brief on the subject, which we have not had time to examine. We have our own construction of the law. If the brief changes our mind, it will not be too late for us to do so after today's hearing, and modify the judgment.

Argument in behalf of plaintiff

Mr. MARGOWSKI. May it please the court, this case is of such importance to the rent program, in this community, as well as throughout the United States, that we desire to proceed and make our record in this hearing, if the court has no serious objection.

The COURT. Well, if the court had an objection, he would not entertain it.

Mr. GRUBER. May it please the court, this is an action brought against, as the court knows, the Justice of the Peace, the

90 Constable, and the sheriff of Tarrant County, and pursuant to leave granted by the Court, the landlords who are essentially and primarily concerned.

We believe that the cases can, in general, be grouped into two divisions, as Your Honor has already indicated.

The first group of landlords consists of those who filed notices in the State Court sometime between June 30 and July 25, but who did not obtain judgment by July 25. The court has already indicated that it believes an injunction should be granted restraining such evictions, and we will set forth briefly the reasons which we believe supports the court's position.

The second group of landlords includes those who obtained judgments of eviction between June 30 and July 25, but whose tenants had not yet been evicted on July 25.

All the landlords herein concerned are the owners of dwellings within the Fort Worth Defense Rental Area, and, therefore, are subject to the rent regulation for housing, issued by the Price Administrator.

The Rent Regulations for Housing provides in Section 6, that no tenant may be evicted from the premises, except in accordance with the other provisions of the rent regulations, whether by court order, by physical dispossession, by agreement, or otherwise. It is all-inclusive. No tenant may be evicted during the effectiveness of the rent regulation, unless there has been complete compliance with that regulation.

91 Section 6 (a) provides for certain notices to be given in cases where a landlord may evict a tenant for nonpayment of rent, or for other specified reasons, set forth in the regulation.

Section (b) provides that in other instances, the landlord may obtain a certificate of eviction from the Price Administrator, authorizing him to proceed with his eviction in the State Court.

In none of the cases, it is admitted here, has there been compliance with the rent regulation. As we understand it, the position of the landlords is that they are not subject to the rent regulation, because they either filed suit before July 25, or obtained a judgment between June 30 and July 25.

The COURT. What is the date that the new Act became effective?

Mr. GRUBER. On July 25, Your Honor.

The COURT. The 25th?

Mr. GRUBER. That is right, Your Honor.

As to the first group of landlords, we will deal with those rather briefly. The rent regulation provides, as I have stated, no tenant may be evicted without complying with the regulation. There is no provision specifically excepting landlords who did file suits in the interim period. The law is well settled. Where a suit is filed, and it has not yet proceeded to judgment, and, as a matter of fact, after judgment, and still pending on appeal, if the law is changed in the meanwhile, the new law will govern. That was the rule in Carpenter versus Wabash Railroad, 309 U. S. at

92 page 23.

Thus, as the court has indicated, the landlords who had not obtained judgments in the interim period, have no standing to evict a tenant, and an injunction should be granted against them.

Now, we have the group of landlords who had obtained judgments in the interim period. Again, let me refer to the regulation. Section 6, I repeat, provides that no tenant may be evicted, shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession, or otherwise, regardless of any contract, lease, agreement, or obligation heretofore or hereafter entered into. No exception is made for landlords who obtained judgments in the interim period. Thus, landlords are clearly within the precise terms of the regulations. The Federal Law, being paramount, they are, of course, subject to it, regardless of the State Judgment.

Now, this question, Your Honor, has arisen in several other places in the United States, and four cases have already proceeded to judgment.

The leading one is Porter versus Merhar. In that case, as in many of these cases, the landlord had obtained a judgment of possession in the interim period between July 1 and July 25, and a writ of execution had been issued. The tenant, however, had not yet been removed from the premises on July 25, and with the renewal of the Act, the reinstatement of the Act, by the Ex-
93 tension Act of 1946, the Price Administrator filed in the District Court of Cleveland, the Federal District Court, for the Northern District of Ohio, a suit for injunction, to restrain the landlord and Constable of the State Court, from evicting the tenant, a suit just exactly like the one here in question.

In this case, the District Court denied the Administrator an injunction. On appeal to the Circuit Court of Appeals, the Circuit Court granted a mandatory injunction, reinstating the tenant into the premises, because, immediately upon the decision of the District Court, below, denying injunction, the tenant had been removed from the premises, by the threat of the Constable to throw his furniture in the street. The Circuit Court of Appeals, by Judge Shackelford Miller, granted, as I said, a mandatory injunction, reinstating that tenant in possession, and indicating, in speaking of the case, that the decision below was clearly wrong, and when final hearing would be held, would be reversed.

A copy of that injunction, Your Honor, is attached to the brief that I have just handed you, and a copy of which I can furnish to the Defendants' attorneys.

Mr. GILBERT. What is the citation?

Mr. GRUBER. The case has not yet been reported. The judgment was handed down at 2:40 o'clock p. m., August 6, 1946. It was in the Sixth Circuit Court of Appeals.

Three other cases in the District Courts have since ruled
94 on this precise question. In each of them the facts were on all-fours with the case here, namely, the landlord had obtained judgment in the State Court in the interim period, but had not yet succeeded in evicting the tenant on July 25. In each of them the District Court granted the administrators prayer for injunction and restraining the eviction.

The first of those cases was Porter against Ayers, decided by Judge Elmer Davies, on August 2, 1946, in the middle district of Tennessee.

The second was Porter against Noerr, which was decided by Judge John Druffel, on August 16, 1946.

And, the third, was Porter against RePar, decided by Judge Emerich Freed, in the District Court of Ohio, on August 19.

Thus, so far as the adjudicated cases are concerned, they have all uniformly ruled that a judgment obtained in the interim period does not preclude the application of the rent regulation for housing, and where the tenant is still in possession on July 25, when the Extension Act came into force, an injunction should be granted by the Federal District Court, restraining all further proceedings to evict the tenant.

Apart from authority quoted, there can be no doubt that the injunction here should be granted.

As I have just said, it is squarely in point. It squarely states that the tenant may not be evicted, unless the regulation has
95 been complied with, and no exception is made of any nature whatsoever. If there was any doubt concerning the meaning of the regulation, an official interpretation was issued on July 25, by Paul Porter, as administrator of the Office of Price Administration.

By the interpretation, an authenticated copy of which I have attached to the brief, handed to Your Honor, and which, I believe, was introduced in evidence in the previous hearing, states that after certain preparatory conditions, it states, "As a result any eviction which occurred during the interim period was not a violation of the Act or Regulation." That is, an eviction that was accomplished before July 25, as to those we do not seek to reinstate a tenant, but in the cases we are here dealing with, the interpretation goes on to say, "If, however, he, that is, the tenant, is in possession on July 25, 1946, he is entitled to the protection of the eviction provisions of the regulation, and it is a violation of the

regulation for the landlord on or after that date, to attempt to evict by court process or otherwise, except in accordance with the provisions of Section 6 of the regulation."

Certain illustrations are then furnished, as part of this same official interpretation.

Illustration 3 covers a large group of the cases here. It states the landlord had no ground for eviction under the regulation, and did not comply with the notice requirements of Section 6 (d).

The landlord instituted suit on July 1, 1946——

96 The COURT. Let me understand, counsel, just your position. During the interim, after the expiration of the original OPA Act, and before the passage of the new one, is it your understanding that they still had to go to the OPA to get permission to institute eviction proceedings?

Mr. GRUBER. Absolutely not. I will deal with that just shortly, Your Honor, if Your Honor will bear with me.

The COURT. All right.

Mr. GRUBER. To continue with the illustration, the landlord instituted suit on July 1, 1946, and obtained judgment for eviction on July 15, 1946, under the local law, but the tenant was still in possesion on July 25, 1946. It would be a violation for the landlord to attempt a tenant's eviction, by utilizing an execution or writ of possession, which had been stayed by the Court, until after July 25, 1946, or for the landlord to attempt to evict a tenant by an execution or Writ of Possession, which has been issued before said date, but, in fact, not executed.

There is, Your Honor, in this proceeding, another group of cases, in which various landlords had applied for certificates of eviction before June 30, and had been granted them, but in each of which the time period had not elapsed, after which the landlord, under the Certificate, would be entitled to proceed with his action. The official interpretation covers that situation also.

It states, in Example 4, the Landlord obtained a certificate
97 relating to eviction under Section 6 (b) 2, effective six months from June 1, 1946. On July 1, 1946, the landlord instituted an eviction action, and obtained a judgment on July 15, 1946, but the tenant was still in possession on July 25, 1946. Although the landlord's action in instituting suit was not a violation, by reason of the saving clause in the Act, any attempt by the landlord to evict the tenant on or after July 25, 1946, by the utilization of the court process, or otherwise, is a violation of the regulation. The landlord can, of course, proceed to evict under the local law at the expiration of six months from the date on which he was granted his eviction certificate.

Thus, we have a crystal clear regulation susceptible of no doubt, and to reinforce it, and to notify the public so that all persons concerned would know, this official interpretation was issued.

As Your Honor knows, an official interpretation of the administrator, or the administrator of any administrative body, is entitled, in the words of the Supreme Court to controlling weight, unless it is plainly erroneous or inconsistent with the regulation. That case was Bowles versus Seminole Rock & Sand Company, 325 U. S. 410. The court, to round out that quotation, stated, "The intention of Congress or the principles of the Constitution in some situation, may be relevant in the first instance, in choosing between various constructions. But, the ultimate criterion
98 is the administrative interpretation, which becomes of controlling weight unless it is plainly erroneous, or inconsistent with the regulations." Numerous Circuit Court of Appeals decisions have reiterated that decision. We have decisions in almost every Circuit Court in the country, and it is settled law, now, beyond any doubt.

Here, clearly, there is no inconsistency between the regulation and interpretation, but one reinforces the other; thus, this interpretation would be of controlling weight upon the Court, if it was necessary to rely on it. As a matter of fact, it is not, because the regulation is clearly applicable to the case, and in plain language controls it.

Your Honor, to answer the question you just raised, we do not contend that the entering of the judgments in the interim was a violation, or that the landlords were under any obligation to comply with the provisions of the regulations in the period between July 1 and July 25.

Section 18 of the Price Control Extension Act of 1946, declares: "The provisions of this Act shall take effect as of June 30, 1946, and (2) all regulations, orders, price schedules, and requirements under the Emergency Price Control Act of 1942, as amended, which were in effect on June 30, 1946, shall be in effect in the same manner, and to the same extent as if this Act had been enacted on June 30, 1946."

But, to get to the question, consider the question raised by Your Honor——

99 The COURT. Right there, I do not have a copy of the Act before me. Does it contain the same penal provisions that the original Act contained?

Mr. GRUBER. Yes, Your Honor, it does, in this proviso, which I am about to read, this covers that situation specifically. We realize an act already done could not be made criminal by Congress,

or anyone else. It would be a violation of the Constitution of the United States, as an ipso facto law.

It goes on to cover that precise situation, "Provided further, that no Act or transaction, or omission, or failure to act, occurring subsequent to June 30, 1946, and prior to the date of enactment of this Act shall be deemed to be a violation of the Emergency Price Control Act of 1942, as amended, or of any regulation issued thereunder."

Our position, Your Honor, is we say these judgments were legal, the landlord committed no violation, illegal, or otherwise, in obtaining them. What we seek to do, is not to punish the landlord in any way for obtaining that judgment, but merely to restrain further action taken after July 25. Clearly, Congress has a right to legislate prospectively, and that is what it did. It said after July 25, no landlord may remove a tenant without having complied with the rent regulation.

Thus, there is no conflict between the regulation and extension Act. The regulation does not say that the judgment, or obtaining of the judgment, was an illegal act. It says merely, only the tenant may not be evicted in the future, unless the regulations have been complied with, which would be squarely in accordance with the provisions of the extension Act of 1946.

It is my understanding that certain landlords are going to contend here, or have contended, that they have vested rights, which cannot be denied by Congress, by reason of having obtained judgments in the interim period. Their original argument was made with respect to a proceeding commenced, but not completed, before July 25, in the last hearing. I state that, of course, there is no vested right until a judgment has been obtained. I presume the same argument will be made by the landlords that where they have obtained a judgment in a state court, they have such a vested right, that Congress cannot interfere.

Well, of course, it is now elementary, and well-settled law, that in the interest of general welfare, Congress may deprive any private person of any so-called vested right under a contract. The Supreme Court, in Guaranty Trust Company versus Henwood, 307 U. S. 247, said, at page 258, "And contracts between private parties cannot create vested rights which serve to restrict and limit an exercise of a constitutional power of Congress." That has many times been reiterated by the Supreme Court of the United States.

In Norman versus Baltimore & Ohio Railway Company, the famous Gold Clause case, the contention was made the plaintiff had the right, under his contract, a vested right, to obtain gold in payment of his bonds, and the Court held, of course, that

the Paramount Power of Congress cut across such a vested right. And, there are many other such cases that are cited in the brief.

On this precise question, a ruling has already been made by the Emergency Court of Appeals; a certiorari has been denied by the Supreme Court. In that case, the contention was made, just as here, that the rent regulation was invalid, because it cut across certain leases, or other vested rights, in a landlord and deprived him of such rights. The Emergency Court of Appeals upheld that regulation and certiorari was denied by the Supreme Court.

The Emergency Court said, and the case is reported at 137 Fed. (2) 654, Certiorari denied 320 U. S. 787, the court said, "It may be conceded that the Act and regulations have the effect of impairing the obligation of certain existing leases. But even the states, to which the contract clause of the Constitution specifically applies, are not prohibited from impairing existing contracts when incidental to the proper exercise of their sovereign power to protect the safety, health, and welfare of their people." The Court cited Marcus Brown Company versus Feldman, in 1921, 256, U. S. 170, and Home Building and Loan Association versus Blaisdell, also in the Supreme Court.

It went on, "Likewise, Acts of Congress, the effect of which has been to impair existing contracts, have been many times sustained. As we have seen, the Act here in question is an exercise of the War Power of the Federal Government. Private contracts
102 cannot stand in the way of the exercise of this power. As Justice Holmes said in Dillingham versus McLaughlin, 'The operation of reasonable laws for the protection of the public cannot be headed off by making contracts reaching into the future'."

Thus, we have a general doctrine of law applicable here, in a specific case already passed upon by the emergency court, and in which certiorari was denied by the Supreme Court, settling the matter. There is, of course, no distinction between the rights under a judgment and the rights under a contract. Many decisions in the Supreme Court have cut across judgment rights. In Wright versus Union Central Life Insurance Company, 304 U. S. 502, the Court upheld a federal statute which extended the period of redemption of land from a mortgage foreclosure. The plaintiff in that case was a purchaser at the mortgage foreclosure sale, and he contended, as the landlords do here, that the judgment gave him certain vested rights, the court said no rights are vested as against the Acts of Congress, for the general welfare of the people, to cut across them as to any future action, and upheld the Constitutional Action.

The COURT. Counsel, who is to be the judge as to the general welfare? If the court is to do it, the court must delegate to itself the determination of the nation's problems, instead of Congress?

Mr. GRUBER. No, sir, in this case there is no question about that.

103 The Emergency Act of 1946, as Your Honor knows, has been repeatedly upheld by the Supreme Court of the United States. Those cases are Lockerty versus Phillips, Bowles versus Willingham, Yakus versus United States, 321 U. S. 414, Lockerty against Phillips, 319 U. S. 182, Bowles versus Seminole Rock & Sand Company, 325 U. S. 410, the ruling on the direct rent regulation, Bowles against Willingham, 321 U. S. 503.

Thus, there could be no doubt in this case, the Price Emergency Control Act is constitutional. It has been repeatedly held by the Supreme Court, and it is unquestioned. There is no decision to the contrary. Thus, it must be held, where the Act is constitutional, and, of course, if it is constitutional, under the doctrine it is cut off, as I said to you already, ruled upon by The Emergency Court of Appeals, and certiorari denied by the Supreme Court.

We have also had cases coming under the present Act, which reached the Supreme Court in which the landlord had obtained judgment for eviction. Two cases were recently reported, Porter against Lee, at 66 Supreme Court 1096, and Porter against Dicken, 66 Supreme Court, 1094. The Supreme Court held that the District Court had power to enjoin the eviction of the tenants, even though the landlord had already obtained a judgment of eviction in a State Court.

To illustrate the situation in another field, this case is precisely the same as one in which a seller had made a contract
104 of sale to a purchaser during the interim period, let us say on July 15, but delivery was not to take place until August 5. I think it will not be contended that the Price Administrator does not have the power to declare that that delivery may not be made at more than the ceiling price, even though the seller had a so-called vested right under his contract, to obligate more than the ceiling price. That has been very well settled, the precise question ruled upon, in re Kramer in 288 New York, 467, by the higher court of New York. There can be no doubt that that is a case where the situation is the same, in which case the seller has every vested right under a contract, to sell at more than the ceiling, "You can't stop me, I have a vested right under my contract." Here in this case the landlord says, "I have a vested right under my judgment, and you can't stop me, even though the Act is legal." In each case, the case is the same.

We are not saying the landlord is a criminal for having obtained a judgment of eviction in the interval, not complying with the regulation. But, what we do say is, we can prevent further proceedings in violation of the rent regulation, which would have to take place after the Act had been renewed on July 25, 1946.

There is a subsidiary question in this case, a question which Your Honor has already indicated, that is the question of whether we can enjoin the Justice of the Peace, the Sheriff and the Constable.

105 May I say, Your Honor, as a preliminary, that while we are convinced, and can show the cases, that we can enjoin the Justice of the Peace, in deference to Your Honor's reluctance to interfere with the State Courts, we will stipulate to dismiss now, the action as against the Justice of the Peace; but, we believe we are entitled to an injunction against the Sheriff and the Constable involved in this case. That question, too, has already been authoritatively decided by the Supreme Court of the United States, in Porter against Dicken; the situation was this:

The landlord had obtained a judgment of eviction against a tenant in a state court. The administrator brought suit to restrain the landlord and the sheriff from evicting the tenant, because he contended that the eviction would violate the rent regulation. The lower court granted a temporary injunction, which was dissolved by the Circuit Court of Appeals. No hearing on the merits was held by the Circuit Court, because the Administrator took certiorari directly from the District Court to the Supreme Court, and we went to the Supreme Court, and obtained an injunction from the Supreme Court, directed against the landlord, and against the sheriff. That case, as I have previously cited, was decided in 66 Supreme Court 1094, at the present term.

Similarly, in Porter against Lee, the administrator brought suit for injunction against a landlord and the Justice of the Peace, and the court held the District Court was empowered to grant the injunction.

106 In Henderson versus Fleckinger, 136 Fed. (2) 381, the Circuit Court held that fraction 265 of the judicial code, did not prohibit the issuance of an injunction against the execution of a State Court judgment of eviction, the action was brought against the constable and landlord. The same ruling was made in two other circuits, in Bowles against Hayes, 155 Fed. (2) 351, in the Third Circuit, and Brown against Wright, 137 Fed. (2) 484. In the first of those cases, the Justice of the Peace was enjoined. In the second, the Sheriff was enjoined.

In the very recent case I mentioned before, Porter against Merhar, decided on this precise question the other day by the Sixth Circuit, an injunction was granted by the Sixth Circuit Court against the constable, as well as against the landlord.

Many district courts have granted injunctions against State Officials, including the Justice of the Peace, Sheriff, and Constables of the various courts. Those cases are cited in the brief, and there is no need to repeat them here.

Thus, it is concluded on this point, we believe we are entitled to an injunction against the Justice of the Peace, the Sheriff and the Constable. I believe that is well settled by the Supreme Court and Circuit Court, but in deference to Your Honor's reluctance to enjoin the State Court itself, we stipulate to dismiss as against the Justice of the Peace, but not as against the Constable and Sheriff.

Thus, in quick summary, the thing is this: The rent regu-
107 lation forbids the eviction of tenants in this case, in clear language. It has all the force of law. Four Circuit Courts of Appeal have already ruled on the question, and each one have issued injunctions enjoining such procedure involved here. If there was any doubt about the meaning of the regulation, the interpretation clearly completes it, and it would be binding on the court, if it was necessary. Of course, Your Honor realizes the Court here cannot consider, if there was such a question, the validity of the regulation. Section 204 (d) of the Emergency Control Act provides that only the Emergency Court of Appeals may consider validity of the regulation, and no other court, District Court, or otherwise, may consider it, except upon appeal from the Emergency Court. The Supreme Court said that in Seminole Rock & Sand Company case, that I cited.

Thus, a regulation providing the interpretation, the interpretation reinforces that.

The adjudicated cases are squarely in point, and we believe support our position that an injunction should be granted to restrain eviction of the tenants who were still in possession on July 25, 1946, where the landlords had not yet complied with the provisions of the Rent Regulations.

The COURT. Do attorneys for the officers, or for the property-holders, desire to be heard? I will state, we may hear from you, but the Court in this particular case is of the opinion, as he announced the other day, so you need not spend
108 a heap of time on it.

Motion to dismiss as to three suits

Mr. GRAVES. Your Honor, I was going to ask the Court to dismiss as to three suits, as to three of the landlords, and I wanted to make a statement of the facts.

The COURT. I might state to counsel, as was already indicated by counsel for the Government, or OPA, that we assume that regardless of which way this case goes, that there probably will be an appeal, and the court will be helpful, so far as he may be in helping either party to get his record in proper form.

Mr. MARGOWSKI. Might I suggest we proceed to make the record first, before proceeding with the other arguments?

The COURT. There is more or less of a motion to dismiss, in effect, and if counsel wants to be heard on that, we will hear him.

Mr. MARGOWSKI. We are not waiving our rights to make our record.

Mr. GRAVES. The first case is No. 11,466, Mrs. Marrow. In that case, the plaintiff took a non-suit when this injunction was issued, I mean, when the temporary restraining order was issued, the plaintiff took a non-suit and commenced proceedings in strict compliance with the present OPA regulations, and since that date, the tenant has vacated without judgment, has vacated and surrendered the premises to the landlord.

Mr. MARGOWSKI. What case is that?

Mr. GRAVES. That is Mrs. Morrow, 11,466.

109 Mr. MARGOWSKI. 11,466?

Mr. GRAVES. Yes.

The COURT. Counsel for the OPA might advise the court if there will be any resistance to the motion?

Mr. GRUBER. Your Honor, I am not personally familiar with the facts, and I would say, in general, we would agree to dismiss this action as to any landlord who has complied with the rent regulation. We would request, when Your Honor makes his order, he can include that. I think we can agree with them, I do not believe the facts are in the record to support that, but if counsel, if he has complied with the regulation——

The COURT. We will let counsel state his motion, and we will let him make the record; if it cannot be agreed upon.

Mr. GRAVES. That is that Mrs. Morrow. The exact situation exists in the case of Black v. Berman, that is No. 11,488.

The COURT. What was the Morrow number?

Mr. GRAVES. The Morrow number is 11,466. In both of those instances, the tenants have vacated and surrendered the premises, after we commenced it. We dismissed the suits pending, and dismissed the action, to comply with the OPA regulation, and they vacated. Now, in 11,478, it appears in your pleadings as J. E. Brown, it should be J. E. Brooks versus O. W. Turner. In that case, suit was filed, suit was commenced during the interim, and was set for trial the day the injunction was issued, but when we came to trial, the tenant had already vacated, and

110 moved out, and no judgment taken, although they surrendered possession of the premises.

The COURT. Let me see if we have these numbers straight. I will ask, the number in the particular case before the court is 1,180, which is only four figures. All the other numbers counsel called contained five figures.

Mr. GRAVES. I am giving you the number as appears in the Justice Court. They had those landlords named as defendants, and I was asking wouldn't they permit them to be dismissed; there is no controversy between either the landlord or tenant; the landlord is in possession of the premises.

The COURT. You clients, Morrow and Brooks are parties to this proceeding by way of answer or motion filed here?

Mr. GRAVES. They filed nothing at all, they were just named in these pleadings as defendants; they have been served with no process of any kind.

The COURT. No formal answer has been made?

Mr. GRAVES. No formal answer has been made of any kind; but I just wanted to have them dismissed if I could, because they are in possession of their premises, and there is no judgment pending there now, but there was a judgment, but they took non-suit.

Mr. MARGOWSKI. I would like to get these numbers straight.

Mr. GRAVES. All right.

111 Mr. MARGOWSKI. Morrow versus Berman, you said is 11,469?

Mr. GRAVES. 466, that is the way it appears in your pleadings.

Mr. MARGOWSKI. All right; I have found it.

Mr. GRAVES. 11,466, Morrow.

Mr. MARGOWSKI. O. O. Black versus Bernard is 11,488.

Mr. GRAVES. 11,488.

Mr. MARGOWSKI. I have that.

Mr. GRAVES. You have the other one, you have the name of Brown, but the correct name is Brooks, and it is 11,478.

Mr. MARGOWSKI. Let me get that; 11,478?

Mr. GRAVES. Yes.

Mr. MARGOWSKI. Well, I have that.

Mr. GRAVES. Yes.

Mr. MARGOWSKI. You accepted service, though, for your client, Brooks?

Mr. GRAVES. Yes, Brooks. But, the man had vacated the day the case was set for trial, the tenant had vacated the premises and surrendered them to the landlord, but we took no judgment, because this temporary restraining order was issued that day, no judgment was taken and it was just left in abeyance there, and I can see no reason for retaining them as parties to this suit, parties defendants, all three of them.

Mr. GRUBER. As I have already said, Your Honor, I don't believe any of this evidence is in the record, and I do not
112 believe it would be proper procedure to allow the motion now, but we can stipulate as to any landlord that has complied with the regulation, we can by amicable agreement——

The COURT. What is the total number of the landlords affected by this hearing here?

Mr. GRUBER. I believe, Your Honor, there are twenty-six named in this proceeding, but I understand there are many others throughout the State of Texas, all over, who are depending upon Your Honor's ruling.

Mr. MARGOWSKI. It might give interest to the court that in the amended complaint that was filed, in which the landlords were made parties——

The COURT. That is what we had in mind.

Mr. MARGOWSKI. There were twenty-six. That number has been reduced, in the suits having been dismissed to some cases, and the tenant having moved, but the circumstances are not known to us under which the tenant moved, whether voluntarily, or not; but it is quite interesting, I think it might shorten the hearing to the court, that there is only two cases involved in these number filed in the amended complaint, which would be affected by the court's announced doctrine of having recovered a judgment prior to July 25. All the rest of them, if they have recovered judgment, has been after July 25; two of them, 11,372, United States versus Andrews, judgment, that is on the third page, the last case in that group, the United States versus Andrews, 11,372, the
113 judgment was recovered July 12, 1946, and the suit was dismissed August 13, 1946.

Now, the next one, in which a judgment was recovered prior to July 25, is in the second group, page 4, 11,479, Frankie Page versus Gregg, in which the judgment was recovered July 23, 1946, and that is the only one that could benefit by the court's announced doctrine of not being enjoined, or having recovered judgment prior to July 25. All of the rest of them have either recovered judgment after July 25, or are now pending judgment in the Justice Court.

The COURT. If we followed you correctly, counsel, the record you desire to make would only affect two litigations?

Mr. MARGOWSKI. No.

The COURT. That is, the record itself will only concern directly two litigants?

Mr. MARGOWSKI. No; the record would concern the other litigants, and those are the only two that could benefit by the court's previously announced decision, if he adheres to it, and is not in-

fluenced by any brief, those who have recovered judgments prior to July 25. All the other cases have not recovered their judgment before July 25.

The COURT. We think the court's view on that subject is virtually, unless they desire to contest the disposition, to eliminate them from this consideration, unless they desire to make a record and take an appeal.

114 Mr. MARGOWSKI. I would like, at this time, to offer in evidence a transcript of the hearing, and the testimony introduced at the hearing in Dallas before this court, on the 5th of August, the full testimony introduced by both sides at that hearing, as part of this hearing. I offer this transcript at this time.

(The instrument referred to was marked "Plaintiff's Exhibit No. 1," for identification.)

Mr. LATTIMORE. Your Honor, there are a good many of us who were not parties to the suit at that time; we know nothing of the evidence, we have no opportunity to prepare ourselves, and we are not even parties to the suit. We object to the introduction of the evidence.

The COURT. The court is inclined to sustain the objection of counsel, in view of the situation. It may be counsel will stipulate, after he examines it; it may be offered, subject to such additional testimony that he may desire to make, but we could not admit it over his objection; when he was not a party.

Mr. MARGOWSKI. It was offered in the interest of time. We would be forced to go through the same testimony, in order to establish the status of these suits at the time the Price Control Act came back into effect.

Opinion

The COURT. We had a hearing on the pleadings more or less here; I believe it was on the 7th of August. The court announced, in a preliminary way, what his views were. And, in order to make those announcements clear, we made some notes. I

115 think it may be well to read these, before you make up your record; and then it may be that some of these numerous parties it might want to be included in the record, might decide to drop out, and we feel it might clarify the situation some.

I think it would not be inappropriate to suggest it at this time since this is, more or less, according to our view, a matter of first impression. We observe, for instance, a voter. We are all concerned in voting, more or less, right now. When he goes to the polls he should not concern himself as to whether his candidate will win, but that his candidate is right, and that he is the right man, even if he gets but one vote.

We think, when a judge goes to pass upon a contract, he should not concern himself about the views of his brother, as to whether he is going to be upheld, or not. He should not be looking forward, to writing a decision, with the idea of securing approval on the right or left, or above or below. He should be guided by one thought only, and that is, is his opinion just, and is it according to the law?

The Court notes with reference to general welfare, and we might observe something in that connection as to how that term got into the Constitution. There was a long discussion in which James Madison took the leading part, about whether or not the Federal Government should pay the debts that had been incurred by the States during the war of the revolution. Virginia, Massachusetts, in particular, and some of the other States, had spent
116 large sums of money trying to equip the Colonial Army. The Federal Government had no funds, except paper, that it had no means of redeeming.

As to whether or not the Federal Government should assume these debts, it was voted in and out more than once, referred to the general committee, and then to special committees, and finally a report was adopted, based upon the character of the debt; and the test was, was the money spent in the general welfare? That is, did Virginia, did Massachusetts incur the debt in the prosecution of the war for the benefit of all the States? If it did, all the States were liable.

So, the test, in the insertion of that term "general welfare," was whether or not a debt should be assumed by the general government, and then in the final draft they put it in in its present form.

Monroe, who, after he became President, and was a member of the Constitutional Convention, a very worthy measure went through; that was for the benefit of a locality. He said, "That is a bill for the benefit of a locality, not in the general welfare," as those who wrote the Constitution decided. Andrew Jackson vetoed every measure that came before him, of a local character.

Within the last few years, or the last two decades, however, we have become inclined, when we wish to do something, and when the judiciary more or less decides to supplement the legislature, to do it under what is called the General Welfare Clause.
117 That idea has inoculated the laity until they believe that the General Welfare Clause is dominant, or predominant, over all the other Constitutional provisions.

We had a layman, who was an important business executive to write us a letter. He said, "If I were a judge"—he sent it to Judge Knox, and a great many judges—"If I were a judge, and any interpretation of the Constitution interfered with the general welware of the majority, I would disregard the Constitution, and hold

with the welfare, well-being, of the majority." To the laity, a majority, the word has charm about it; and, any judge who rules against what he believes would be the welfare of the majority, would not be a judge of justice and fair play.

I answered that man's letter, and I said, "If you were a judge, and would disregard the provisions of the Constitution when you thought the interest of the majority required it, in your opinion, then you would also disregard the statute. Thus, you would be a judge not limited or restricted either by the Constitution or by the statutes, and Hitler himself never had more power than you would have, if you were of that character. A judge on a bench has no authority to change the law, to make it what he wants it to be." Why, if we did, one would repeal the OPA and the other extend it. A judge cannot do those things. He must determine, as best he may, just what the law is, and not what somebody is ging to say to you.

This general welfare tendency, when taken in the last and final resort, puts on the conscience of the judge, what is the
118 general welfare. If a judge answers back, and makes his decision in the light of that decision, he has usurped every function of Congress. We might as well, then, abolish Congress, and have a group of absolutists, to rule this country. The ruling body of this country is Congress and not the courts; therefore, it is out of that we should respect the law as it has been understood through the years, and wait, until the particulars have been definitely determined.

In the Court's mind, the question, for instance, of injunction of officers, is somewhat different here. There was a period, counsel agree, in the court, between the 30th of June and the 25th of July, in which there was no law on the subject, there being no Federal law, a justice of the peace issued a writ or a summons and entered a judgment, under the law of the State. He violated no law when he issued those writs and entered that judgment. Are we, then, to enjoin him? Where an officer is enjoined, the inference is, the only reasonable deduction is, that he was doing something wrong, or else he would not be enjoined. Thus, this court might be called upon to say to a State officer, "You are now reprimanded and enjoined from doing that which the law of your State commands you to do." We do not think that any of the case come within that situation. Moreover, the officers of the court cannot defend these landlords, and for that reason, as we announced the other day, the officer does not know what the landlords' defense was. He
119 acted only within the law of his State. The court does not think it lies within the jurisdiction of this court to enjoin

or reprimand him for anything, for doing what was the law of his State at the time.

The court does not think any officer that issued any order, or any judgment, during that period, when there was no Federal law, that would supersede the law at the time should be enjoined. And, moreover, we doubt, unless there is a conflict, unless there is an attempt on the part of a State official to deprive the Federal Government of the effect and force of law, and the court of its jurisdiction, and that they should be enjoined.

For a hundred years, this situation stood without law, and there arose between the Federal courts, and the State courts, as a matter of comity—one judge calls it a matter of good manners—a practice of not running in conflict with each other. What was good manners, as the judge called it, became a matter of comity. And, what became a matter of comity finally became a matter of law. Thirty-five years ago the Congress of the United States enacted a law that the Federal courts should be without authority to enjoin the State courts, in the discharge of their duties, and that is a law that we think the Federal judges should respect and we should respect, on the time-honored principle of comity.

As I said a moment ago, I made some notes in accordance with my decision here before, and I am going to announce those, and in order that there be no mistake, I will read them.

First, on the subject of enjoining State officers. In mat-
120 ters of concurrent jurisdiction, and in instances where the duties of the two courts overlap each other, or, in other words, where there is a conflict of jurisdiction, the court that first exercises jurisdiction over the subject matter will not be disturbed by the other courts.

We have repeatedly had cases, for instances, in bank robbery cases, the State has a Statute on the subject, and the federal government has a statute. We always respect the court that first obtains custody and gives the trial.

Placing the stamp of approval upon this prevailing comity, that has existed for more than one hundred years, the Congress of the United States, thirty-five years ago, enacted a law that is now found in Title 28, Article 379, of the United States Code Annotated.

In effect, the law provides that with the exception of bankruptcy matters, the United States Court would not issue any injunction to stay the proceedings in a State Court; so, as we have indicated before, the Justice of the Peace, the Sheriff and the Constables, and all state officials, who were active during that period when there was no federal law, but who were acting solely under the laws of Texas, will not be enjoined by a federal court.

It is the age-old practice of comity between states and the nation, and it was written in the law, in Section 379, of Title 28.

Therefore, all the officers of Texas that have been
121 brought into this case, will be dismissed. They are not proper parties until they transgress their official duties and make themselves intermeddlers and partisans. In this case, they acted only when there was no federal law on the subject. An officer of the State is presumed to be acting within the law of the State, defining his official duties, and that presumption will stand until the contrary is made to appear by proof to the court. However, if he performs an act that is void for the want of law to support it, then his act is without authority in a state court, and in a federal court.

Having disposed of the officers of the State of Texas, we will notice for a moment the subject of retroactive laws.

This provision of the Constitution comes under the head of the expost facto provision and was designed to affect only criminal statutes. But, the courts have held that there may be injunctions in cases where there is a penal provision, and that OPA statute does carry with it penal provisions. But, aside from these penal provisions, and whether it comes under the provision of the Constitution, in reference to expost facto law, it is the view of the court that when a man takes a judgment of the court, that was lawful at the time, it becomes a vested right, just as much so as if he had taken a deed of conveyance that was lawful at the time.

Therefore, all judgments that were rendered, and become final before a new law on the OPA was enacted, this court is inclined
122 to respect, and to treat them as vested rights, and as not coming directly under the Constitutional inhibitions of expost facto law, because of the penal provision of the Statute.

Congress did, on the 25th day of July 1946, reenact the Office of Price Administration Law with certain modifications. From and after that date, any act of any state official, in violation of such Congresseional Enactment, will be treated as invalid by this court. So, any judgment that has been entered since the enactment of the new OPA will be disregarded, and the plaintiff in it will be permanently enjoined. But, if he had a judgment before the enactment of the new OPA law, he will not be enjoined and his judgment in the State Court will be respected.

Colloquy.

Mr. GRUBER. May I ask, Your Honor, whether you are ruling whether the regulation is invalid, or whether you are ruling the Act itself is invalid?

The COURT. I do not know whether we get your question, counsel?

Mr. GRUBER. Are you ruling, Your Honor, in connection with this, landlords who had obtained judgments before July 25, that the regulation is invalid, which prevents such evictions, or the Emergency Price Control Act itself is invalid?

The COURT. Yes; I ruled as to those suits, that that provision that undertook to have included those cases, by having its provision made retroactive in there, is not valid.

Mr. GRUBER. That the Act is invalid?

The COURT. That it is invalid as to those suits.

123 Mr. GRUBER. You are not ruling, then, just to the regulation?

The COURT. No.

Mr. GRUBER. Thank you.

The COURT. It is invalid as to your rights, just like they would pass a law to enter or invade your home without a hearing.

Mr. GRUBER. On that score, Your Honor, that, of course, becomes important as to the whole case if we will take an appeal. But, in my argument, I cited many cases, many cases in the Supreme Court, that the Supreme Court has ruled Congress can cut across vested rights in judgment.

In one case in the Emergency Court of Appeals, where the landlord was restrained, he made precisely that contention.

The COURT. I do not think that question has been decided by the Supreme Court. If it has, it has not been on this state of facts. We have stated our views.

Mr. GRUBER. On the other features——

The COURT. I have not finished the announcement.

Mr. LATTIMORE. We withdraw the objection made to the introduction of this record.

The COURT. As to agreed judgments that were had, that was an item in the hearing held here the other day, as to agreed judgments. If there was a case pending in the State Court before the enactment of this second OPA provision, and the parties

124 entered into an agreement as to what the judgment was, or should be, and the judgment was accepted on the basis of that agreement, the court will respect the judgment.

Now, with reference to suits where the parties are maintaining them in the State Courts——

Mr. MARGOWSKI. May I interrupt at this time, as to agreed judgments entered as of what date?

The COURT. Any time before the enactment of the new law, any date before the 25th of July, the enactment of that second provision of the Congress; in the opinion of the court, immedi-

ately arrested all proceedings, and anything done since then is unlawful, in the way of entry of judgment. What occurred before then, we take it to be a vested right.

Mr. MARGOWSKI. In other words, I assume—I am trying to get the court's ruling—as to agreed judgments entered into between the parties, prior to July 25, the court will respect that judgment, and not enjoin the landlord?

The COURT. Yes.

Mr. MARGOWSKI. As to agreed judgment entered into after July 25, do I assume the court's previous announcement, that they will be enjoined?

The COURT. If they have made an agreement the Court will respect their agreement regardless, under the circumstances, unless the agreement was secured by fraud.

Mr. MARGOWSKI. I mean, after the regulation and Act
125 came back into effect after July 25?

The COURT. If counsel for both sides come into court, the court will permit them to dispose of their litigation and will request the judgment they have written——

Mr. MARGOWSKI. But that litigation has been started and prosecuted without complying with the rent regulation, and the judgment or agreed judgment at the time of its entry is in violation of the rent regulation.

The COURT. If the OPA was a party to the proceeding, and agreed to it, it is estopped now to set it aside; if it was not a party, it is not bound.

Mr. MARGOWSKI. We were not a party to any of them.

The COURT. If the parties, the litigants, made an agreement, we think they are bound by the agreement and by the enry.

Mr. MARGOWSKI. Irrespective of what date the judgment was entered?

The COURT. Yes, up to date.

Mr. GRUBER. Your Honor, on that score, as I understand these agreements, they were agreements to enter judgments, which were in turn to depend upon Your Honor's ruling in this case. In other words, they did not agree to enter a judgment of eviction, they agreed to enter judgment for the eviction, but that judgment should be dependent upon Your Honor's ruling in this case. So, with that, Your Honor, aren't judgments obtained after July
126 25, the agreement was made in those cases, the judgment should not be put in effect, if Your Honor ruled such judgments were invalid.

The COURT. My ruling is every judgment obtained since the new enactment is void.

Mr. MARGOWSKI. Whether by agreement or otherwise?

The COURT. Oh, if they entered it by agreement, I think men have a right to get out of court, and we encourage them to do it.

Mr. MARGOWSKI. Perhaps the court is not getting my point clearly. You announce as to any judgment entered before July 25, that judgment would be respected by this court, and the landlord would not be enjoined. I assumed that the court meant any judgment entered either on contest or by agreement before July 25.

The COURT. Would be respected?

Mr. MARGOWSKI. Would be respected and not enjoined.

The COURT. Now, counsel injected a phase of it just now that had not been brought to my attention. If they made the agreement, based upon a contingency of what this ruling would be, why, they have got no agreement, other than what this ruling amounts to.

Mr. MARGOWSKI. All right, coming to the thought, the court then announced as to any case in which judgment had not been recovered by July 25, the court would restrain and enjoin those landlords. All right, now, therefore, the court goes on to say that after July 25, in a suit which had been prosecuted
127 prior to July 25, filed by one of the parties, entered into an agreed judgment after July 25, that the court would respect that judgment and not enjoin the landlord.

The COURT. I am not sure that I followed counsel, but the thought that is in my mind and that we have announced is this: That men may agree to enter judgment, and they may put it in writing as between themselves, as to when it will be binding, and the action of the Justice of the Peace may add but very little dignity to it. But, if they have, out of court, adjusted their difference, and have put it in the form of a judgment, we are not inclined to reopen it.

Mr. MARGOWSKI. Let me point out to the court, as to those cases where the judgment is entered by agreement, after July 25, by agreement of the parties, now according to the court's announced decision, you stated that any case that had not reached the point of judgment by July 25, when the rent regulations and the Price Control Act came back into effect, that the court would enjoin the landlord on those judgments. All right, now, if by virtue of the lawyers or the parties, after July 25, having entered an agreement for a judgment in a suit which had not been prosecuted in accordance with the rent regulations, and which, in the absence of that agreed judgment, this court would enjoin. Yet, we are now under the court's announced decision, to permit those lawyers to enter agreed judgments or parties, after July 25, and could not be enjoined.

128 The COURT. Of course, we cannot go into every man's mind, as to what motivated him, when he made the agreement, or what motivated him when he agreed to a judgment. Many judgments, I have no doubt, have been entered by litigants, simply to buy peace, simply to get out of court. Many damage suits have been settled, when it seems there was no liability, simply to get out of court. Many landlords and many tenants have, no doubt, in these years, made agreements, and since the matter was in court they let the record show the terms of their agreement. We think they have a right to get out of court, when they get ready.

Mr. MARGOWSKI. That is right, Your Honor, if they got into court in compliance with the rent regulations. But, where we have these lawsuits that got into court that did not comply with the rent regulation, and according to the court's announced decision, they had not obtained a judgment on July 25, the court could enjoin the landlords. Now, while this litigation was pending, if either the landlord and the tenant got together and entered into an agreement for a judgment up there, or the lawyers entered into an agreement for a judgment, entered after July 25, then the court is permitting those cases to be eliminated from the injunction, simply by virtue of the fact that the landlord and the tenant, or the attorneys, have agreed to a judgment, which was not commenced, prosecuted, or terminated, in accordance with the rent regulations, but those landlords who had no lawyer, or who let their litigation stand until this terminated, are to be en-

129 joined by this court. In other words, the agreement to get that case out of court, when it was not gotten into court in compliance with the regulation, while those who did not get them out of court are going to be enjoined?

The COURT. The court has a respect for the lawyer, as an officer of the court, and we do not look with disfavor on any man procuring legal advice. And, if on that legal advice he takes a course, it might be to his advantage. We think that is his business.

Mr. MARGOWSKI. I do not desire to intentionally prolong the matter, I am just trying to get clear, so we can get the situation as to what kind of cases it is going to apply to.

The COURT. I might clear it to you this way, Counsel: Suppose a judgment was entered in Justice Court, and was procured by misrepresentation and fraud. If the OPA decided it was of enough importance, the court thinks the judgment might be set aside, by proper pleading, and even in this court, because this court is specially charged with that matter. But, if they, with their full understanding of their rights, especially where they had counsel, decided to get out of court, and go home, and tend to their business, the court does not want to encourage them to change it.

Mr. MARGOLYSKI. Even though they have not complied with the regulation, or the Act, as it came back into effect?

The COURT. We do not think they ought to be penalized. If the tenant wants to come in and reopen it, and state he has been overreached, that is a question of fact.

The COURT. I was thinking the record should be made. We are just up to this point, the government desires to be heard a little further about the rulings here.

Mr. MCLEMORE. Your Honor, may I be permitted, as amicus curiae, be permitted to file a brief, that might be of some assistance to the Court? Your Honor, I do not represent any people in Fort Worth, or in the court here, but in compliance with what counsel for OPA said though, numerous people——

The COURT. We contemplate reading the brief that has been handed us by the government, and you may hand yours in, and we will read them together.

Mr. MCLEMORE. They go to the fundamental issues, rather than to definite——.

The COURT. The court thinks the OPA has been already held constitutional and there is no question, no use of taking up time, raising the issue again.

Mr. MCLEMORE. That is right. There is one thing, if the court would permit me four or five minutes, I will dispose of it. I believe it is directly in point. Section 379, of Title 28, makes the prohibition, with reference to issuing injunctions upon any proceeding of the State Court; in Kelsey versus New York
131 Life Insurance Company, an opinion written in 1941——

The COURT. Now with that——

Mr. MCLEMORE. Your Honor, it is very short.

The COURT. You need not worry about 379. The court has his mind made up now. The Court said one court interfering with the other is just a matter of good manners, and it became a matter of comity, and the enactment of this statute was a recognition of that comity, and we think this is a case applying to it.

Mr. MCLEMORE. Yes, Your Honor. And I was going to refer to the Kelsey case, for the purpose of showing that prohibition extended to the parties of the litigation, not only to the court, and its ministerial officers, but it also extends to the officers, and it is in that brief, and I direct the court's attention to it, and respectfully ask you read it. Justice Frankfurter discusses it from its inception to this present day.

Mr. GRUBER. Your Honor, if I may have a word—on the 26th of July in the New York Life Case, the Supreme Court held squarely on this precise question, that Section 265 did not pro-

hibit the Supreme Court from enjoining proceedings in the State Court. I have a copy of the opinion, I would like to submit it.

The COURT. As the court said to counsel, enjoining of an officer of the State, when he was doing his duty according to law, is not one that is going to receive this court's sanction.

Mr. MARGOWSKI. May it please the court, may I proceed to make the record?

132 The COURT. Yes.

Mr. MARGOWSKI. If the court please, we offer in evidence a transcript of the testimony introduced at the hearing before Your Honor at Dallas on the 5th of August 1946 and on the continued hearing of this court on August 7, from pages 1 to 44, inclusive. I understand, Judge Lattimore, you have withdrawn your objection?

Mr. LATTIMORE. Defendant Bailey withdraws the objection heretofore made.

The COURT. We so understand. With that evidence the complainant rests? All right, do the defendants desire to make a record?

Mr. LATTIMORE. I would like to make a record at the proper time for defendant Bailey.

The COURT. Unless someone else desires precedent, you may proceed.

Mr. BAILEY. Your Honor, before Judge Lattimore states his record, I am a little bit confused with all the argument of counsel, and Your Honor trying to state his views on the subject, made here. I don't know just where we are. I would like to have one thing clarified for the benefit of myself and my client. It came out of the argument of counsel, and some of the pronouncements by the Court. Counsel has stated that any procedure that was started during the interim period, they were not claiming it was

133 in violation of the law, as it then existed, and they did not think the penal provisions applied. But now, they are asking the court to enjoin further application of the local law in that respect, because the OPA has superseded the local law. The question I am concerned with, Your Honor, is this: I would like to have a statement about it, and I will know whether I want to stay here, and it might affect several other of these people. My client has instituted a suit that was enjoined by this proceedings. Since the suit was instituted, we have attempted to come back in retrospect, since the law, and comply with the law. I am concerned with whether we are prohibited from proceeding further in the case that is now started. The law has been complied with, or whether we have to dismiss our suit, take a nonsuit and start over

again. I take it many of these cases have not proceeded to judgment——

The COURT. The court so considers it. We will ask counsel for the OPA to state his attitude.

Mr. GRUBER. As I stated before, we would agree, and I think we could arrange amicably with counsel later on, in any case counsel can show us the Act has been complied with, the regulation has been complied with, we will stipulate to dismiss the injunction, that it be dismissed against him, that is, if the case in the State Court complies with the Act and Regulation.

Mr. MARGOWSKI. May I suggest on that question, all that can be eliminated, counsel will be given an opportunity to make his record, and what he has done to comply with the Act, and the Court can decide whether to enjoin or dismiss his injunction.

134 The COURT. It seems that will have to be done. You might get counsel to agree with you and stipulate just what your situation is.

Mr. BAILEY. If your Honor please, the statement counsel made is very deceiving, in my judgment. He said if the Act has been complied with in all respects, we will stipulate with you, you may proceed. Of course, the facts I have outlined Your Honor, are, we started suit before OPA regulations became effective again; and I think it is perfectly obvious that to counsel we have not complied with the Act, because the Act says before a suit is started you must give certain notices.

The COURT. I am not sure counsel has followed you. As I understand, you started your action between the 30th of June and the 25th of July, when the OPA law was in suspense, or after expiration?

Mr. BAILEY. Yes, sir.

The COURT. You did not get your judgment by the 25th of July?

Mr. BAILEY. No, sir.

The COURT. We think you are under the provision of the OPA law, as enacted the second time.

Mr. BAILEY. The question then is, Your Honor, whether or not my suit is void, and I must dismiss it, or, since I have now gone back and complied with the OPA provisions as to notice and so forth, may I proceed now with the suit? I complied with

135 the Act, except I did not give certain notices before the suit was started.

The COURT. I think when you are complying with it, have their permission to proceed; that the suit should be dismissed as to you. If you have a permit from the OPA, they have no grounds to enjoin you.

Mr. MARGOWSKI. Let me suggest, why not introduce the facts here when your time comes, when you filed the suit, and what you have done since?

Mr. BAILEY. That is right.

The COURT. You might state it, counsel; and if the government counsel disagrees with you, you may produce your proof; but if they agree, it may be stipulated.

Mr. LATTIMORE. May I proceed? We offer in evidence transcript of judgment in 11,468, F. A. Bailey versus Jack Fletcher.

(The instrument above referred to was marked by the Reporter, Defendant's Exhibit No. 1 for identification, and is as follows:)

(Defendant's exhibit No. 1)

F. A. Bailey et ux., Plaintiff, vs. Jack Fletcher, Defendant.
Hal S. Lattimore, Plaintiff's Attorney.

Suit in forcible detainer for possession of property situated in Justice Precinct No. 1 of Tarrant County, Texas.

Filed 20th day of July 1946;

Citation Issues 20th day of July 1946;

Returnable to 29th of July 1946, and placed in the hands
136 of Constable;

Executed this 22nd day of July 1946;

Court in session 29th day of July A. D. 1946:

On this day came on to be heard the above styled and numbered cause, and the defendant and plaintiff appeared and announced ready for trial, and it appears to the Court that the action is one for detainer and that the plaintiffs are the owners of the hereinafter described premises and that the defendant is in arrears on his rent due plaintiffs and that the defendant has committed waste on the premises of plaintiffs, and that plaintiffs are entitled to the possession of the premises.

It is therefore ordered adjudged and decreed that Frank A. Bailey and wife, Mrs. Eugenia Bailey, do have and recover of and from Jack Fletcher the possession of the premises situated at #3538 Avenue M, Forth Worth, Texas, and that the plaintiffs recover their costs, but no writ of possession shall issue prior to September 1st, 1946.

GUS BROWN, *Judge*.

THE STATE OF TEXAS,
County of Tarrant:

I, Gus Brown, Justice of the Peace in and for Precinct No. 1, in said County and State, do hereby certify that the above and foregoing is a true and correct copy of all the entries on my docket in

the cause No. 11,468, wherein F. A. Bailey and wife, Mrs.
137 Eugenia Bailey, Plaintiffs, vs. Jack Fletcher, Defendant, together with a true and correct copy of the Bill of Costs in said case, as same appears on said docket.

Witness my hand, this the 15th day of August 1946.

(Signed) GUS BROWN,
Justice of the Peace, Precinct No. 1,
Tarrant County, Texas.

Statement of facts

Mr. LATTIMORE. Following Your Honor's suggestion, I would like to make a statement of facts, and if counsel is in any disagreement about it, I will be sworn and testify.

Mr. MARGOWSKI. We have no objection to his purported transcript from the Justice of the Peace.

Mr. LATTIMORE. No; I want to make a statement about it.

The COURT. You may make your statement, and if the government is not prepared to accept it, you may be sworn.

Mr. LATTIMORE. Prior to the time that the old OPA law went out of existence, Bailey, the landlord, served notice to vacate upon the tenant, Jack Fletcher, and furnished copies of that notice to the OPA. No suit for eviction was filed during the existence of the old OPA law. Jack Fletcher's tenancy period expired on June 30, 1946, during the interim when there was not in force any OPA law. This suit was filed. It was set for trial the second day after the new OPA law was effective. On that
day, Mr. Fletcher, the tenant, appeared with his lawyer,
138 Mr. Mike Pile, in the Justice Court. A member of our office was there for the landlord. An agreement was made with Mr. Fletcher personally, and his lawyer, that the judgment be entered and that Mr. Fletcher would vacate on September 1, and he would not be asked to vacate sooner, and the judgment was entered, replacing that agreement. It was made without any inducement or pressure of any sort. The facts are, and the judgment so recites, that Mr. Fletcher was in arrears in his rent, and had been in arrears in his rent for a substantial period of time; that he had committed substantial waste on the property, which was all set up in the notices furnished the OPA and is set up in the judgment, and is, in fact, true. That is all.

The COURT. I will let the government say whether it concurs in it or not, or whether they want to inquire further into the matter.

Mr. MARGOWSKI. If the court please, I would like to inquire, before the law expired, whether you gave the tenant notice for non-payment of rent?

Mr. LATTIMORE. And waste?

Mr. MARGOWSKI. And waste.

Mr. LATTIMORE. And nuisance?

Mr. MARGOWSKI. And sent a copy to the rent office?

Mr. LATTIMORE. Right.

Mr. MARGOWSKI. The tenant's term expired on June 30?

Mr. LATTIMORE. Right.

139 Mr. MARGOWSKI. Did you specify in the notice, the non-payment of rents, the amount due at the period of time, for which it was due?

Mr. LATTIMORE. Both.

Mr. MARGOWSKI. And thereafter you filed suit during the interim?

Mr. LATTIMORE. That is right.

Mr. MARGOWSKI. And the case was heard on July 25?

Mr. LATTIMORE. Whatever the effective date of the Act, it was two days later.

Mr. MARGOWSKI. July 27?

Mr. LATTIMORE. 29th, July 29th?

Mr. MARGOWSKI. At that time you entered an agreed judgment with the provision that writ of restitution not issue until September 1, 1946?

Mr. LATTIMORE. Right.

Mr. MARGOWSKI. We think that the statement shows that this particular landlord complied with the rent regulations in giving the tenant notice, with the specified requirements of the grounds of the regulation, grounds for eviction, stating the amount of rent due, the period in which it was due, and what the maximum rents was, and a copy being furnished to the rent office, he has proceeded, even during the interval, and since the Act came back, in effect, and in accordance with the regulation, and should not be enjoined.

140 The COURT. This particular case stands on its own, and we concur with counsel.

Colloquy

Mr. MILLER. If the court please, I have one case here in which there is pending—I mean was pending, but I have requested the Justice of the Peace to dismiss it. Now, will it be necessary for us to continue to be in this hearing? There are any number of them here that have been dismissed. There is no action pending in the Justice Court. I think that this case will surely come under the protection of the OPA. On August 8, we dismissed our suit, yet we are down here today.

The COURT. Well, if you dismissed your suit, then make that known to the Court, and we think you are entitled to be dismissed from this case.

Mr. MILLER. That is right. Now, I have one, Your Honor——

Mr. MARGOWSKI. Now, wait a minute; wait a minute, Davis. Are you coming on later, or are you simply making an argument at this point, as to which suits should be dismissed?

Mr. MILLER. In Cause No. 11,487 should be dismissed.

Mr. MARGOWSKI. What is the name?

Mr. MILLER. J. C. Maroney versus Mrs. Hemphill.

Mr. MARGOWSKI. When was it dismissed?

Mr. MILLER. August 8.

Mr. MARGOWSKI. Is the tenant still in possession?

Mr. MILLER. He was the last I heard of it.

Mr. MARGOWSKI. Dismissed, and the tenants still in
141 possession?

Mr. MILLER. It was at that time. I don't know whether they have moved since then or not.

Mr. MARGOWSKI. They were in possession as of August 8?

Mr. MILLER. Yes, at August 8.

Mr. MARGOWSKI. If they have moved since then, it was not the result of——

Mr. MILLER. It was never the result of this, because there has never been any trial, no judgment, writ of restitution, or anything entered. Now, I have one other matter. Is Judge Brown sick? I have not been able to get ahold of him. He has been sick, and I have one here in which I have a judgment. I desire to dismiss that, and will dismiss it upon Judge Brown's return to the court. I do not want to proceed any further in the proceedings, but I would like to dispose of that matter.

The COURT. In other words, you want to agree to set the judgment aside?

Mr. MILLER. Yes, sir; I want to agree to set the judgment aside and do it as soon as Judge Brown is available.

The COURT. It has not been done. Why, the court sees no reason why you might not be permitted to do it, but inasmuch as it has not been done, the court will enjoin your judgment, if it was entered between the 25th of July.

Mr. MILLER. Well, in other words, Your Honor, I will state
my reason for going ahead and dismissing it. The judg-
142 ment was taken on the 30th day of June, the defendant was represented by Honorable Sol Greines, practicing attorney at this Bar. We entered an agreed judgment on the 30th day of July, after the rent regulation went in. The suit was filed, of course, while there was no OPA. We entered into that agree-

ment. It so happens I know all these parties very well, and this man is building a house. We extended the time until October 1 to give him an opportunity to get his new house, and I know——

The COURT. In other words, the real subject, the bone of contention was removed by the agreement, and your giving the man a chance to get him a house?

Mr. MILLER. That is right, and why should we be compelled to go on with this litigation, when I am satisfied, and my client is satisfied the man will be out of the house on the first of October? In other words, if the Government is going to appeal from this, we don't want to be a party to it. We are satisfied with the situation as it is, and I am sure that counsel will take my word for it that I will dismiss this suit, before this judgment is entered. I will endeavor to—will you accept the clerk's dismissing it up there?

Mr. MARGOWSKI. I want to know more about the tenant in the thing, Dave. Is the tenant still in the house?

Mr. MILLER. The tenant is still in the house.

Mr. MARGOWSKI. And the tenant will not be hereafter removed; except in accordance with the regulation?

143 Mr. MILLER. That is right. I will dismiss the suit.

Mr. GRUBER. On that agreement, Your Honor, we would consent to dismiss this defendant.

Mr. MARGOWSKI. Wait a minute. That is on 11473?

Mr. MILLER. Yes.

Mr. MARGOWSKI. That is agreeable to dismiss that one.

Mr. MILLER. Yes. I have the judgment on it, on the 30th day of July.

Mr. MARGOWSKI. You are going to set the judgment aside?

Mr. MILLER. I am going to set the judgment aside, and just tell the court to dismiss it.

Mr. MARGOWSKI. The tenant is still in possession, and you will not get him out except in accordance with the regulation?

Mr. MILLER. That is right.

Mr. MARGOWSKI. In this other suit, was that judgment or suit dismissed?

Mr. MILLER. Suit dismissed, no judgment.

Mr. MARGOWSKI. Is the tenant in possession?

Mr. MILLER. He was when the suit was dismissed; I haven't talked to my clients any more.

Mr. MARGOWSKI. All right, you or your client will not attempt to remove that tenant, except in accordance with the regulation?

Mr. MILLER. I could not, because I could not get an order, or anything, because it has been dismissed by the court.

144 Mr. MARGOWSKI. I just wanted to get it clear.

Mr. MILLER. I will not; that is correct.

Mr. MARGOWSKI. You can verify whether your tenant, Hemphill, is still in, can't you?

Mr. MILLER. My understanding is she was going to move. Whether she has or not, I don't know. But, there is no judgment in it, and she is not moving from any judgment, or anything like that in it, you see, because we never got a judgment.

The COURT. Counsel, it will be perhaps a day or two before the draft of the judgment could be submitted. It is the judgment of the court, if your statement here is correct, that your client ought to go out of this lawsuit, and we would be loath to carry it on, if you reach an agreement, and on the basis you have indicated. And unless you want to make a record, I think the matter might be passed.

Mr. MILLER. And I will dismiss this case, or have the clerk dismiss it.

Mr. GILBERT. May it please Your Honor, I am here presently in the capacity of amicus curiae. I have two judgments that were taken by Mrs. Sophia N. Chandler in the same court, but we were not made party defendants in this case, but since we will be bound by whatever decree will be entered, why we would like to make ourselves party to the suit, and create just a little record, so there won't be any argument as to our position.

Mr. MARGOWSKI. We do not object to him intervening in this lawsuit.

The COURT. All right.

Mr. MARGOWSKI. If you will just give me——

The COURT. The leave to intervene will be granted.

Mr. GILBERT. For the purpose of the record, this is a suit instituted by Sophia Chandler, in Cause No. 11,392 versus Nora Gorrell, and this suit was instituted July 8, 1946, and a judgment entered July 15, 1946; Cause No. 11,406, by the same plaintiff, against Mrs. Patty Little, instituted July 10, 1946, and a judgment entered—suit filed July 10, the judgment entered July 17, 1946. In each of these cases, the defendant was represented by Hendricks Brown, a local attorney, and by agreement, a decree was to be entered, as of those two dates, with the understanding that the writ of restitution was not to issue until the morning of the 16th of August, at which time counsel assured me both tenants would vacate. Your Honor, while I am on my feet, I would like just to make an observation in connection with some of the statements counsel made with respect to the interpretation on their own regulations. Rent regulations that were issued after the first law became effective, were followed with interpretations from the OPA office in Washington, and it is most singular, Your Honor, that they have changed their own interpretation of the same regulation.

Interpretation of 6. 1, the effect of the regulation on pending eviction proceedings. This is coming out of their own interpretation. Where an action to evict is pending on the date
146 the regulation becomes effective, in a particular defense rental area, the provisions of Section 6 are applicable, unless a court order has been entered prior to the effective date of the regulation, directing the tenant to surrender possession. If such an order has been entered, the court may use its ordinary processes for the enforcement of such order, and the landlord may request such processes. If no such court order has been entered, the landlord may not further pursue his proceeding, except in accordance with Section 6.

The COURT. That is the interpretation the Court has put on it?

Mr. GILBERT. Yes, sir.

Mr. GRUBER. Your Honor, just by way of explanation, that interpretation is still correct, we still stand by it. The difference in interpretation is this, when we moved into this area the landlord had no way of knowing that fact, so we decided not to disturb each situation when we moved in. The situation, however, when the Act was instituted, was wholly new. Everyone knew the regulation would be enacted; eight separate bills were introduced in Congress to reinstate the regulation. The President requested all landlords not to evict tenants during the interim period, and for that reason, the administrator was prompted by the difference in procedures, to issue the new interpretation. The first interpretation is correct, and perfectly good law, and we stand by it.

The COURT. The court thinks this is a proper area for
147 that regulation.

Statement of facts

Mr. BAILEY. I think counsel, with the consent of counsel, I would like to make a statement for the record, which will be the facts in this case. It is Justice Court cause No. 11,479, J. A. Shellberger versus W. M. Mann, Junior, on July 8, 1946, when there were no rent regulations, J. A Shellberger, through his attorneys, addressed O. M. Mann, Jr., at 3504 Pentecost, a letter in which he stated he desired the premises which he occupied, because he was delinquent in his rent from June 15, 1946; the amount of rent was not shown, nor did a copy go to the Office of Price Administration in Fort Worth. On July 18, 1946, when there was no rent regulation, another letter was addressed to W. M. Mann, Jr., through Mr. Shellberger's attorney, in which he offered to give Mr. Mann some additional time to permit him to find other accommodations. Thereafter, August 1, 1946, Mr. Mann did, by agree-

ment, consent to it. No such copy was sent to the OPA. On August 8, after the rent regulation—I am getting ahead of myself, on July 24, 1946, J. A. Shellberger filed his suit in the Justice Court to evict Mr. Mann for non-payment of rent. He was then more than one month, almost a month and a half, delinquent in his rent, and he filed suit to evict him. On July 25, this suit was filed—I mean, on July 25, the rent regulation was then put in force, and the suit filed later, and he was enjoined from proceeding further. Now, since the new rent regulation, Mr. Shellberger has attempted to comply with the regulation, in that
148 he has addressed letters to Mr. Mann on July 8, 1946, wherein is set out all of the various technical allegations or statements required by the regulation, to wit, the amount of rent, when the property was rented, how much the delinquency was, and when they expected possession of the property, and that was done on August 8, 1946. And, we have complied with the retro-operative law of the regulation of the Office of Price Administration, all since the suit has been filed, and that substantially are the facts in our case. And, the only thing we are asking the court, since we have complied with the law, as it now exists, shall we proceed with our suit? The same state of facts existed, as existed on July 25.

Mr. MARGOWSKI. Let me ask you some questions?

Mr. BAILEY. Yes, sir.

Mr. MARGOWSKI. On August 8, you gave notice of specified amount of rent due, and the period for which it was due?

Mr. BAILEY. Yes.

Mr. MARGOWSKI. And sent that to the defendant? And you gave a copy of that notice to the rent office?

Mr. BAILEY. Yes, sir.

Mr. MARGOWSKI. What do you propose to do? File a new lawsuit, or file an amended complaint in this lawsuit?

Mr. BAILEY. Inasmuch as it is merely an administrative proceeding, and a question of evidence, I don't think, unless we are forced to, a new suit is necessary, and the reason we don't want to file a new suit, Your Honor, is because it is a costly
149 process of instituting suit, and getting out service, and starting over.

The COURT. As the court understands you, your suit was pending, but after the new law, you went and presented the matter to the OPA rent control, and have their permit to proceed with the eviction?

Mr. BAILEY. Your Honor, there is no permit issued by the OPA in this type of situation, it is for nonpayment of rent; but, we did comply with the rent regulation, in advising both tenant and OPA of the amount of rent due, when the premises was first

occupied by the tenant, and when the rent is due, and what date, and all the technical provisions of the Section 6.

Mr. MARGOWSKI. If the court please, and counsel, I think you will readily agree the rent regulation specifies these things shall be done prior to the filing of a suit, and there was no kind of notice to the rent office at the time of the filing of the suit.

Mr. BAILEY. I understand that, Your Honor, his contention is correct, but at the time we instituted the suit, there were no regulations that were effective, by the OPA, with reference to eviction. Our suit was instituted——

The COURT. May we suggest, Judge Margowski, if a man brings a suit, and it is effective, and subject to a demurrer, and his adversary moves to dismiss on demurrers, and he asks leave to amend, and then pleads a suit or cause of action, that has
150 merit to it; why, it is not necessary, we think, to require him to go in and refile, but his real cause of action, which would control the statute of limitations, would date from the filing of the amended pleading. And, if, during a suit, that was pending, that was brought during the time when the OPA was not effective, he brought suit, and then when the new OPA regulation was enacted, he did not abandon his suit, but went to his local administrative agency, and undertook and did comply with those regulations, we think it unnecessary to bring his suit over, as we understand his contention.

Colloquy

Mr. CRUMLEY. If the court please, for the purpose of the record, I am representing one of the defendants in this case, Mrs. Frankie Mae Page. I would like, for the purpose of the record, here, to show that Mrs. Frankie Page instituted a forcible entry and detainer suit in the Justice of the Peace Court, July 16, 1946, against E. B. Gregg and wife.

Mr. MARGOWSKI. Let's get that number.

Mr. CRUMLEY. 11,439.

Mr. MARGOWSKI. 11,439, Frankie Mae Page versus who?

Mr. CRUMLEY. E. B. Gregg et ux.

Mr. MARGOWSKI. And that was filed on July 16?

Mr. CRUMLEY. That was filed on July 16, and regularly called for trial on the 23rd of July 1946, at which time the defendants and plaintiffs were in court.

Mr. MARGOWSKI. July 23?

151 Mr. CRUMLEY. July 23. And, I have here the docket of the court on which the court noted an agreed judgment for the plaintiff, entered on July 23, 1946, no writ to issue until July 29, 1946. That has reference to the Writ of Restitution. And,

it was agreed between the parties there, in the presence of the court, that this Writ of Restitution would be delayed and would not be issued until the 29th day of July, and in the presence of the court, the Plaintiff, Mrs. Frankie Mae Page, returned to the defendant, E. B. Gregg, the tenant in the property in question, a check for rent that had previously been tendered to her, and agreed that these occupants of the premises should remain there, rent free, until the 29th day of July, at which time they would move, or writ of restitution would issue in favor of Mrs. Frankie Mae Page, a defendant in this cause of action before the Court today. The writ was issued on the 30th day of July, and before service was obtained, this injunction suit halted proceedings of obtaining possession.

The COURT. As I understand you, there was an agreement to withhold the execution and that by reason of that agreement, the execution was not issued until after the new Act was passed?

Mr. CRUMLEY. That is right, sir.

The COURT. But you would have issued it before, but for the agreement?

Mr. CRUMLEY. I would have issued it before but for the agreement. We would have issued it on the 25th, or two days—

152 perhaps it would have been the 26th.

The COURT. What was the date of the judgment?

Mr. CRUMLEY. The 23rd.

The COURT. And what date did you institute your suit?

Mr. CRUMLEY. On the 16th day of July.

The COURT. The court thinks your client was within his rights. We will hear from the government, if they want to contest this particular matter.

Mr. MARGOWSKI. Let me ask if there is any objection among any of these lawyers, who have since made their own record, to the introduction of this transcript which we offered previously.

Mr. GILBERT. Would you mind stating what is in it?

Mr. MARGOWSKI. It is the testimony of L. H. Wright, on the premises involved, that no notices were received by his office, and Gus Brown, how the suits were filed, and progress until this hearing.

Mr. GILBERT. It just rerates to the facts?

Mr. MARGOWSKI. To the facts and the suits involved in it. We do not want any objection to that being considered as evidence, without reading it in this case.

The COURT. Gentlemen, we don't know what else may be pending, in proving the record, and having a particular claim. It is time for adjournment, but if there are just one or two more matters to be wound up, we will close now.

Mr. Orr. In case No. 11,482, Mrs. Maud Gregory versus
153 T. T. Manroney, suit was filed on the 23rd of July, and the tenants have long since moved out, and we did not know it, if our client was ever served in this case. We will dismiss the case, because it is moot.

Mr. Margowski. Mrs. Gregory was served.

Mr. Orr. I did not know she had been served; she did not advise us about it, but the case has been dismissed, showing the costs paid.

Mr. Margowski. Let me get the facts. The suit was filed when?

Mr. Orr. The suit was filed either the 23rd or 24th of July.

Mr. Margowski. When did the tenant move?

Mr. Orr. I beg your pardon?

Mr. Margowski. When did the tenant move, or has the tenant moved?

Mr. Orr. The tenant moved, I would say, within a week thereafter.

Mr. Margowski. Did he do so voluntarily?

Mr. Orr. Voluntarily; yes, sir.

Mr. Margowski. Or under the pressure of this suit pending?

Mr. Orr. How was that?

Mr. Margowski. Did he move voluntarily, or because he had the suit pending against him?

154 Mr. Orr. I could not answer what was in the tenant's mind, but it was a friendly matter, so far as our client was concerned. I understood he moved, surrendered the premises with no further ado about it.

Mr. Margowski. We desire to have this matter dismissed from this proceeding here, since it is moot and no more contention between the parties.

The Court. If the Government requires it, we will require the defendant to prove that the litigation has been terminated, but if you want to accept counsel's assurance about the matter——

Mr. Margowski. Your Honor, we desire to enter into no stipulation in this case, because we have not been furnished with any facts under which the tenant moved. Counsel can prove his record and leave it to the court to decide. Maybe, when we get back to our office, the tenant will be over there, and want to know why he cannot get back in the premises, so I would rather not stipulate.

The Court. We realize that situation might arise, and we believe counsel can better bring before the court the order of the dismissing of the suit, of perhaps a statement from the defendant, that he is not further prosecuting the matter.

Mr. Orr. Your Honor please, I have, of course, the docket here, which shows suit was filed on July 24, 1916, and the cause was

dismissed on August 8, 1946. I did not have that information, I am sorry.

155 Mr. MARGOWSKI. It is dismissed what date?

Mr. ORR. On August 8, 1946, dismissed by plaintiff, at the cost of the plaintiff.

The COURT. I think, gentlemen, you may be able to check up on what you have before you, and you need a little time to do it, and we will take this up again this afternoon, and perhaps it will save time. Marshal, will you recess court until 2:00 o'clock?

(Noon recess.)

Mr. ORR. Your Honor, I think my matter would take about a minute, that I would like to present at this time; that is, where the case was dismissed, the case was filed on the 24th of July, and dismissed on the 8th of August, and the occupants moved out on the 31st of July.

Mr. MARGOWSKI. What date was it dismissed?

Mr. ORR. I beg your pardon?

Mr. MARGOWSKI. What date was it dismissed?

Mr. ORR. Dismissed on August 8. I do not know whether citation was issued to this plaintiff at that time or whether she was ever served. We were never informed if she was served, and if she was before this court.

Mr. MARGOWSKI. It shows she was served.

Mr. ORR. It shows she was served?

Mr. MARGOWSKI. And I had a telephone conversation with her after her service, so I know that she was served.

Mr. ORR. May I ask when the service was made, the date
156 the citation was issued?

Mr. MARGOWSKI. Mrs. Gregory?

Mr. ORR. Mrs. Gregory.

Mr. MARGOWSKI. She was served on August 16, 1946.

Mr. ORR. When was it issued?

Mr. MARGOWSKI. I don't know.

Mr. ORR. Your Honor, at that time there was no case pending in the Justice Court, the case had been filed, had been disposed of prior to any service on Maud Gregory, and I take the view——

The COURT. Do you have before you there, counsel, the date on which the judgment was taken?

Mr. ORR. Yes, sir; the judgment was taken on August 8; that is, the case was dismissed, the defendant moved out of the premises on July 31. Counsel only raised the question this morning that she might have been caused to move by reason of this suit, it being shown the plaintiff had a right to bring the suit on July 24, if that was the cause of their moving. They did not have to move on July 31, because they have their rights under the present laws at that time.

The COURT. Your position is, irrespective of the controversy, they are out of the house, and you want to dismiss it?

Mr. ORR. Yes, sir; I think it is moot, and we should be dismissed from this.

The COURT. Does the government care to contest the
157 matter?

Mr. MARGOWSKI. Well, as I stated previously this morning, I don't know the circumstances under which the tenant moved, if he moved as the result of the pending eviction action, why, he may come in and want to be reinstated; I don't know.

The COURT. I think counsel, we will dispose of it in this way, that we will dismiss this suit, and if you find that the party claims he was coerced, or moved under duress, I will reinstate it and have it set for hearing. Now, in making up your record, gentlemen, is there anything else you would like to include?

Mr. GRUBER. Not for the record, Your Honor, but assuming the judgment, as stated this morning, is still the judgment of the court, we should like a temporary injunction pending the appeal, which is provided for in the federal rule, in order to maintain the situation: temporary injunction.

The COURT. The court will grant you a stay order, keeping everything in order pending appeal.

Mr. MARGOWSKI. The government rests.

The COURT. Anything else? Do any of the other defendants have any evidence? Let's see? The court is rather at a loss to know who are the defendants before the court.

Mr. MARGOWSKI. If the court please, I have kept sort of a docket here. The defendant, Mrs. Morrow, was represented by Mr. Frank Graves; the defendant, Mrs. O. O. Black, was repre-
158 sented by Mr. Frank Graves; the defendant J. E. Brooks, by Mr. Frank Graves; then, Judge Lattimore represented the defendant, Mr. Bailey; and Judge Dave Miller represented the defendant J. C. Malone and Anna Billings; and Mr. Gilbert represented Mrs. Sophia Chandler in two suits. Mr. Ward Bailey represented Mr. J. A. Shellbergen. Mr. Frank Crumley represented Mrs. Frankie Page, and Mr. Joe Orr represented Mrs. Gregory. Those are all that have appeared here. The rest of the defendants, I hope so, have been duly cited, and served with process and entered no appearance.

The COURT. Now, these defendants you have just enumerated, counsel, I believe you said they were represented by Mr. Graves. Are they suits that have originated since the new Act or some actions have been taken since the new Act of Congress, reinstating or reinacting the OPA?

Mr. MARGOWSKI. Mr. Graves represented three landlords, Mr. Morrow, in which a suit was filed during the interim, and when the Act came back into effect, he took a non-suit and started a new suit in accordance with the regulations, and the tenant has moved under that new suit. In the second case, Mr. O. O. Black, the suit was dismissed that had been filed during the interim, and a new suit started under the regulations, and the tenant has vacated. The third suit was filed during the interim. No new suit was filed, but the tenant has moved. Now, those are the three that are represented by Mr. Graves.

The COURT. It occurs to the Court that there is really
159 nothing of vast importance among these litigants, and that if counsel for the defendants will confer with counsel for the government, that there is practically nothing that may not be smoothed out.

Mr. MARGOWSKI. That is, with reference to these suits which have appeared by attorney?

The COURT. Of course, you have your appeal on the court's ruling with reference to the officers and with reference to those suits where judgment had been entered before the new law was enacted.

Mr. MARGOWSKI. Yes, sir; and we still have in this lawsuit those cases which were pending, and in which judgment had been entered after the Act came into effect that have not appeared in court here to show a change of conditions from that. We have quite a few of the suits now, lawsuits, that are still pending up there in court, that none of the landlords have appeared here, and they were not to a point of judgment at the time the Act came back.

The COURT. They have been served, however?

Mr. MARGOWSKI. They have been served.

The COURT. Of course, they come within the terms of the judgment.

Mr. MARGOWSKI. And they will be restrained?

The COURT. Yes. If there is nothing further, we will proceed to adjourn, Mr. Marshal. Adjourn court.

Mr. MARGOWSKI. May I ask the court, before adjourn-
160 ment, you will be in Dallas next week, so when we have the judgment drafted, we may submit it to you?

The COURT. Yes, we are going to have a hearing there on the 27th, on a similar action to this.

Mr. MARGOWSKI. I see. That is Tuesday.

The COURT. After that date, we will be there.

Mr. MARGOWSKI. Yes.

The Court. Any other time you desire to contact the court during this month, or otherwise, we will be around here. We are taking over the work of four judges, and you may get in contact with the court in twenty-four hours any time.

Hearing closed.

161 [Reporter's certificate to foregoing transcript omitted in printing.]

162 In United States District Court

Judgment

Filed August 31, 1946

On this Fifth Day of August 1946 came on for hearing before the Court at Dallas, Texas, the Complainant's Motion for Preliminary Injunction against Gus Brown, Justice of the Peace, Dusty Rhodes, Sheriff, and Sully Montgomery, Constable, all of Tarrant County, Texas, and the Complainant appeared by attorneys W. S. Margowski, Lowell D. Gibbons, and Louis C. Ross, and the Defendant Gus Brown appeared by attorney J. L. Winters and Doss Hardin, and Walter J. Donnelly, landlord in one of the eviction suits, through his attorney Lloyd Price asked and was granted leave to intervene in this suit in connection with the eviction suit of Walter J. Donnelly vs. W. P. Lindsey, No. 11477, pending in Gus Brown's Court, and the Court, after hearing the pleadings read and the evidence and argument of counsel, the Court announced that the landlords would be proper parties to the suit and continued the hearing on the Motion for Preliminary Injunction and reset the hearing at Fort Worth, Texas, on August 7, 1946, and that at the hearings on August 7, 1946, at Fort Worth, Texas, the same parties appeared in person and by attorneys, but the Complainant was further represented by Irving Gruber, Chief General Litigation Attorney from Washington, D. C., and at this hearing the Complaint asked and was granted leave of Court to file an amended Complaint and an amended Motion for Pre-

163 liminary Injunction in which the defendant-landlords in said eviction suits had been made parties, and upon request of counsel the hearing on said Motion for Preliminary Injunction was reset by the Court at Forth Worth, Texas, on August 23, 1946, and it further appeared to the Court at hearing at Forth Worth on August 23, 1946, that some of the parties had accepted service of the amended Motion for Preliminary Injunction and notice of said hearing in open Court, and it further appeared to the Court that the defendant-landlords had been served with process and a copy

of the amended Motion setting the hearing on the amended Motion for Preliminary Injunction at Fort Worth on August 23, 1946, and at this hearing before the Court on August 23, 1946, the Complainant appeared by attorneys Irving Gruber, W. S. Margowski, and Louis C. Ross, and the defendant Walter J. Donnelly appeared by attorney Lloyd Price and the defendants Mrs. Morrow, Mrs O. O. Black, and Mrs. J. E. Brooks appeared by attorney Frank Graves, and the defendant F. A. Bailey appeared by attorney Hal S. Lattimore, and the defendants J. C. Malone and Anna Billings appeared by attorney Dave Miller, and the defendant J. A. Shellberg appeared by attorney Ward Bailey, and the defendant Mrs. Frankie Mae Page appeared by attorney Frank Crumley, and the defendant Mrs. Maude Gregory appeared by attorney Joseph Orr, and E. L. Gilbert, attorney, appeared for Mrs. Sophia Chandler, and asked and was granted leave to intervene for and on behalf of Mrs. Sophia Chandler in connection with two eviction suits in Gus Brown's Court as follows: No. 11392, Mrs. Sophia Chandler vs. Nora Gorell; No. 11406, Mrs. Sophia Chandler vs. Mrs. Pattie Little.

That Complainant announced to the Court that it would not further urge its Motion for Preliminary Injunction as
164 against the defendant Gus Brown, Justice of the Peace in and for Tarrant County, Texas.

The Court, after hearing the Motions read and the evidence and argument of Counsel, finds and concludes as follows:

It is ordered that the defendant Gus Brown, Justice of the Peace in and for Tarrant County, Texas be and he is hereby dismissed from said suit.

The Court finds that the defendant Dusty Rhodes, Sheriff, and Sully Montgomery, Constable of Tarrant County, Texas, were performing their duties of their office imposed by the State Laws of Texas in executing any process or orders issued on said Judgments recovered during the interim period, and the Court concludes as a matter of comity said state officers should not be enjoined by this Court from the performance of their duties. It is therefore ordered that the Complainant's Motion for Preliminary Injunction against Dusty Rhodes, Sheriff, and Sully Montgomery, Constable, of Tarrant County, Texas be and the same is hereby denied.

The Court finds that the defendant F. A. Bailey in connection with the eviction suit No. 11468 in Gus Brown's Court against Jack Fletcher, that said defendant has complied with the Rent Regulation requirements as to grounds of eviction and notices necessary to evict a tenant, and the Court concludes that the said defendant should be dismissed from this suit and that no Preliminary In-

junction shall issue against him. It is therefore ordered that the said F. A. Bailey be and he is hereby dismissed from this suit.

165 The Court finds that the defendant J. A. Shellberg in connection with the eviction suit No. 11479 against W. M. Manor, Jr., pending in Gus Brown's Court, that said defendant has complied with the Rent Regulation requirements as to the grounds of eviction and notices necessary to evict a tenant and the Court concludes that said landlord should be dismissed from this suit, and that no Preliminary Injunction shall issue against him. It is therefore ordered that the said J. A. Shellberg be and he is hereby dismissed from this suit.

The Court finds that the defendant J. C. Maloney in connection with the eviction suit No. 11487 against Mary Hemphill pending in Gus Brown's Court filed on July 25, 1946 was dismissed by the Plaintiff on August 6, 1946 and the tenant is still in possession, and the Court concludes that the question of issuing a Preliminary Injunction as to the said suit is moot. It is therefore ordered that the Complainant's Motion for Preliminary Injunction against J. C. Maloney be and the same is hereby denied.

The Court finds that the defendant Mrs. Anna Billings in connection with the eviction suit No. 11373 against Carlisle Garlitz that the Judgment recovered on July 30, 1946, was set aside and said suit dismissed, and the Court concludes that the question of issuing a Preliminary Injunction as against said defendant is moot. It is therefore ordered that the Complainant's Motion for Preliminary Injunction as against Anna Billings be and the same is hereby denied.

The Court finds that the defendant Mrs. Sallie Morrow in connection with the eviction suit No. 11466 against Miss Merrell Burnam that the Plaintiff voluntarily dismissed said suit and

166 started a new eviction suit in compliance with the Rent Regulations, and the Court concludes that the question of issuing a Preliminary Injunction against the defendant Mrs. Sallie Morrow is moot. It is therefore ordered that the Complainant's Motion for Preliminary Injunction as against Mrs. Sallie Morrow be and the same is hereby denied.

The Court finds that the defendant O. O. Black in connection with the eviction suit No. 11488 against James L. Bunnell, that said suit was dismissed and a new suit started in compliance with the Rent Regulations, and the Court concludes that the question of issuing a Preliminary Injunction is moot. It is therefore ordered that the Complainant's Motion for a Preliminary Injunction as against the defendant O. O. Black be and the same is hereby denied.

The Court finds that the defendant J. E. Brooks in connection with the eviction suit No. 11478 against O. W. Turmon, that the Plaintiff has dismissed this suit, and a new suit has been filed in compliance with the Rent Regulations, and the Court concludes that the question of issuing a Preliminary Injunction against said defendant is moot. It is therefore ordered that the Complainant's Motion for a Preliminary Injunction as against the defendant J. E. Brooks be and the same is hereby denied.

The Court finds that the defendant Mrs. Maude Gregory in connection with the eviction suit No. 11482 against C. T. Meroney, that the defendant had dismissed said suit on August 8, 1946, and the Court concludes that the question of a Preliminary Injunction against the defendant is moot. It is therefore ordered that the Complainant's Motion for a Preliminary Injunction against the defendant Mrs. Maude Gregory be and the same is hereby denied.

167 The Court finds that the defendants J. W. and Mrs. J. W. Hughes in connection with the eviction suit No. 11372, that a Judgment was recovered on July 12, 1946 for possession of said property; and the Court finds that the defendant Mrs. Frankie Mae Page in connection with the eviction suit No. 11439, that a Judgment was recovered on said suit July 23, 1946; and the Court finds in the eviction suit No. 11392 of Mrs. Sophia Chandler vs. Nora Gorrell that a Judgment was recovered in said suit July 15, 1946; and the parties agreed that a writ of restitution was not to issue before August 16, 1946; and the Court Finds that in connection with the eviction suit No. 11406 of Mrs. Sophia Chandler vs. Pattie Little that a Judgment was recovered on July 17, 1946, and the parties agreed that a writ of restitution was not to issue before August 16, 1946, and the Court concludes that as to all of said above-mentioned four eviction suits that the provisions of the Price Control Extension Act of 1946 and of the Rent Regulations for Housing are invalid, and the Court concludes that a Judgment recovered before July 25, 1946 in an eviction suit prosecuted according to the State Laws of Texas should be respected, and that the Court will not issue an injunction. It is therefore ordered that the Complainant's Motion for Preliminary Injunction against Mrs. Frankie Mae Page, J. W. and Mrs. J. W. Hughes, and Mrs. Sophia Chandler be and the same is hereby denied.

The Court finds that the defendant Walter J. Donnelly in connection with the eviction suit No. 11477 against W. P. Lindsey that said suit was filed July 16, 1946, and that on July 30, 1946 the said parties and their attorneys appeared in Court and

168 agreed that an agreed Judgment should be entered in said suit for possession of the property on July 30, 1946, and that the Writ of Restitution would be withheld for thirty days, and the Court concludes that said agreed Judgment entered by said parties after July 25, 1946 should be respected by this Court, and will, therefore, not be enjoined. It is therefore ordered that the Complainant's Motion for a Preliminary Injunction against the defendant Walter J. Donnelly be and the same is hereby denied.

The Court finds that the defendant-landlords named below in connection with the eviction suits described below have filed said eviction suits during the interim period from July 1, 1946, to July 25, 1946, without complying with the Rent Regulations as to the grounds of eviction and the required notices and had not recovered Judgment in said suits on or before July 25, 1946, said landlords in suits being described as follows, and said suits being filed and pending in the Court of Gus Brown, Justice of the Peace of Tarrant County, Texas: No. 11469, R. M. Riley vs. Robert Ladd; No. 11470, D. E. Barnhill vs. J. C. Nicholson; No. 11483, Beatrice & Clyde Roberson vs. Lela Ward; No. 11467, O. B. Wood vs. Paul Courtney; No. 11471, Della French vs. B. N. Carrold; No. 11474, C. W. Stover vs. Walton Parker; No. 11475, Charles Bembrey vs. Leroy Williams; No. 11464, Mrs. E. McCord vs. Jack Childress; No. 11480, Mrs. D. M. Hazelwood vs. R. M. Bartlett; No. 11481, Mrs. Henrietta Woodward vs. Mrs. Lock Wicker; No. 11474, P. H. Rice vs. M. F. Newman;
169 No. 11485, Ethel C. Cantley vs. Charlie Burns; No. 11489, M. E. Dove vs. Carl Phillips; No. 11480, A. E. Wolcott vs. P. Preston; No. 11486, Sam Johnson vs. Jimmie Wright. And the Court concludes that the provisions of the Price Control Extension Act of 1946 and the Rent Regulation for Housing apply to all of said suits, and the landlords therein should be enjoined.

It is therefore ordered that the defendants R. M. Riley, D. E. Barnhill, Beatrice & Clyde Robertson, O. B. Wood, Della French, C. W. Stover, Charles Bembrey, Mrs. E. McCord, Mrs. D. M. Hazelwood, Mrs. Henrietta Woodward, P. H. Rice, Ethel C. Cantley, M. E. Dove, A. E. Wolcott, and Sam Johnson, their agents, servants, employees, attorneys, and all persons in active concert or participation with them be and each of them are hereby enjoined and restrained from the further prosecution of said eviction suits described above and from evicting or attempting to evict the tenants therein named and set forth above in said suits and be restrained from further prosecution of said eviction suits and from issuing, executing, and/or causing to be

issued or executed a writ of restitution to evict any tenant in any of said above described suits.

Entered at Dallas, Texas, this 30 day of Aug. 1946.

T. WHITFIELD DAVIDSON, *Judge.*

Approved as to form:

W. S. MARSOWSKI.
H. S. LATTIMORE.

Approved:

M. WARD BAILEY.
LLOYD E. PRICE.
E. L. GILBERT.
JOE F. ORR.
FRANK E. CRUMLEY.
FRANK R. GRAVES.
J. ELWOOD WINTERS.

170 In United States District Court

Restraining order

Filed August 31, 1946

Whereas in the above styled and numbered cause, Paul A. Porter, Administrator of the Office of Price Administration, the Complainant is prosecuting an Appeal to the Circuit Court of Appeals for the Fifth Circuit from a portion of an order entered on the 30th day of August, 1946 in which the Complainant appeals from that portion of the order in which the Court denied a Preliminary Injunction against Dusty Rhodes, Sheriff, and Sully Montgomery, Constable, of Tarrant County, Texas, and the following landlords: Mr. and Mrs. J. W. Hughes, Mrs. Frankie Mae Page, Mrs. Sophia Chandler, J. C. Maloney, Anna Billings, Mrs. Sallie Morrow, O. O. Black, J. E. Brooks, Mrs. Maude Gregory.

Now, therefore, it is ordered: That the defendants Dusty Rhodes, Sheriff of Tarrant County, Texas, and Sully Montgomery, Constable of Tarrant County, Texas, Mr. and Mrs. J. W. Hughes, Mrs. Frankie Mae Page, Mrs. Sophia Chandler, Walter J. Donnelly, J. C. Maloney, Anna Billings, Mrs. Sallie Morrow, O. O. Black, J. E. Brooks, and Mrs. Maude Gregory, their

171 agents, servants, employees, attorneys, and all persons in active concert or participation with them, be and they are each hereby enjoined and restrained from the further prosecution of the following eviction suits and from evicting or attempting to evict the tenants herewith involved from the premises herein involved and restrained and enjoined from issuing, executing, or

causing to be issued or executed a writ of restitution in said suits to evict said tenant or tenants, said suits being in Justice of the Peace Gus Brown's Court of Tarrant County, Texas, and described as follows:

Mr. and Mrs. J. W. Hughes in eviction suit No. 11372 against J. T. and Hazel Andrews.

Mrs. Frankie Mae Page in eviction suit No. 11439 against E. B. and Mrs. E. B. Gregg.

Mrs. Sophia Chandler in eviction suit No. 11392 against Nora Gorrell

Mrs. Sophia Chandler in eviction suit No. 11406 against Pattie Little.

Walter J. Donnelly in eviction suit No. 11477 against W. P. Lindsey.

J. C. Maloney in eviction suit No. 11487 against Mary Hemphill.

Anna Billings in eviction suit No. 11373 against Carlisle Garlitz.

Mrs. Sallie Morrow in eviction suit No. 11466 against Miss Merrell Burnam.

O. O. Black in eviction suit No. 11488 against James L. Bunneli.

J. E. Brooks in eviction suit No. 11478 against O. W. Turmon.

Mrs. Maude Gregory in eviction suit No. 11482 against C. T. Meroney.

During the pendency of this Appeal to the Circuit Court of Appeals for the Fifth Circuit of the above styled
172 and numbered suit.

Entered at Dallas, Texas, this 30 day of Aug. 1946.

T. WHITFIELD DAVIDSON, *Judge*.

173 In United States District Court

Amended restraining order as to appellees

Filed September 28, 1946

Whereas in the above styled and numbered cause, Paul A. Porter, Administrator of the Office of Price Administration, the Complainant, is prosecuting an appeal in this cause to the Supreme Court of the United States from the portion of an order entered on the 30th day of August 1946, in which the Complainant appeals from that portion of the order in which the Court denied a preliminary injunction against Dusty Rhodes, sheriff, and Sully Montgomery, constable, Tarrant County, Texas, and the following landlords, Mr. and Mrs. J. W. Hughes, Mrs. Frankie Mae Page, and Mrs. Sophia Chandler.

Therefore, it is ordered that the last sentence in the restraining order issued in this cause on August 30, 1946, in so far as it pertains

to the afore-named defendants, is amended to read as follows: "During the pendency of this appeal to the Supreme Court of the United States of the above styled and numbered suit:"

All other terms, conditions and provisions of the restraining order in the within cause entered on the 30th day of August, 1946, remain in full force and effect.

Entered at Dallas, Texas, this 28th day of September 1946.

(Signed) T. Whitfield Davidson,
T. WHITFIELD DAVIDSON,
United States District Judge.

174 In United States District Court

Order further amending restraining order issued on August 30, 1946

Filed October 9, 1946

Whereas in the Restraining Order entered by this Court on the 30th day of August 1946, Anna Billings was restrained from the further prosecution of the Eviction Suit No. 11373 against Carlisel Garlitz.

And whereas an Amended Restraining Order was entered by this Court on the 28th day of September 1946, and in said Restraining Order the name of the defendant Anna Billings was inadvertently omitted as one of the defendants to be restrained from the further prosecution of such suit against Carlisle Garlitz. Now, therefore, said Restraining Order be and the same is hereby amended as follows:

Whereas in the above styled and numbered cause, Paul A. Porter, Administrator of the Office of Price Administration, the Complainant, is prosecuting an appeal in this cause to the Supreme Court of the United States from the portion of an order entered on the 30th day of August 1946, in which the Complainant appeals from that portion of the order in which the Court denied a preliminary injunction against Dusty Rhodes, Sheriff, and Sully Montgomery, Constable, Tarrant County, Texas, and the following landlords, Mr. and Mrs. J. W. Hughes, Mrs. Frankie Mae Page, and Mrs. Sophia Chandler, and Anna Billings.

175 Therefore, it is ordered that the last sentence in the restraining order issued in this cause on August 30, 1946, insofar as it pertains to the aforenamed defendants, is amended to read as follows, "During the pendency of this appeal to the Supreme Court of the United States of the above styled and numbered Suit".

All other terms, conditions, and provisions of the restraining order in the within cause entered on the 30th day of August 1946, remain in full force and effect.

Entered at Abilene, Texas, this 8 day of October 1946.

T. Whitfield Davidson,
T. WHITFIELD DAVIDSON,
United States District Judge.

176 In United States District Court

Application for appeal

Filed September 27, 1946

Paul A. Porter, Administrator of the Office of Price Administration, an agency of the Government of the United States of America created by law, plaintiff herein, states that by judgment entered on the 30th day of August 1946, this Court dismissed such portion of the plaintiff's First Amended Complaint and Motion for Preliminary Injunction as prayed for injunctive relief against Dusty Rhodes, Sully Montgomery, Mrs. Frankie Mae Page, J. W. Hughes and Mrs. J. W. Hughes, and Mrs. Sophia Chandler. The plaintiff, feeling aggrieved by the ruling of the Court in dismissing such portion of his action, prays that he be allowed to appeal to the Supreme Court of the United States for a reversal of said judgment, and that a transcript of the record of this cause, duly authenticated, be sent to the Supreme Court of the United States.

The petitioner presents to the Court herewith a statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this cause.

Filed at , Texas, this 27 day of September 1946.

Leonard M. Cox,
LEONARD M. COX,
Reg. Lit. Attorney,
W. R. Herring,
W. R. HERRING,
Spec. Trial Attorney,
Attorneys for Plaintiff.

201 In United States District Court

Order allowing appeal

Filed September 28, 1946

This cause having come on this day before the Court on petition of Paul A. Porter, Administrator of the Office of Price Admin-

istration, praying for the allowance of an appeal to the Supreme Court of the United States for a reversal of the judgment of dismissal of such portion of plaintiff's First Amended Complaint and Motion for Preliminary Injunction as prayed for injunctive relief against Dusty Rhodes, Sully Montgomery, Mrs. Frankie Mae Page, J. W. Hughes and Mrs. J. W. Hughes, and Mrs. Sophia Chandler, and requesting that a duly authenticated copy of the record of this cause be transmitted to the Clerk of the Supreme Court of the United States; the Court having heard and considered said petition, together with petitioner's statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this cause, the same having been duly filed with the Clerk of this Court,

It is further ordered and adjudged that Paul A. Porter, as Administrator of the Office of Price Administration, be and he hereby is allowed an appeal to the Supreme Court of the United States from the judgment of this Court dismissing such
202 portion of plaintiff's First Amended Complaint and Motion for preliminary Injunction as prayed for injunctive relief against Dusty Rhodes, Sully Montgomery, Mrs. Frankie Mae Page, J. W. Hughes and Mrs. J. W. Hughes, and Mrs. Sophia Chandler, that a duly authenticated copy of the record in this case be transmitted to the Clerk of the Court, and that a citation be issued as provided by law.

It is further ordered that Paul A. Porter, as Administrator of the Office of Price Administration, be and is hereby allowed a period of sixty days from the date hereof within which to file and docket said appeal in the Supreme Court of the United States.

Dated at Dallas, Texas, this 28 day of September 1946.

(Signed) T. Whitfield Davidson,
United States District Judge.

203 [Citation in usual form showing service on Dusty Rhodes, filed Oct. 3, 1946, omitted in printing.]

204 In United States District Court

Assignments of error filed September 27, 1946

Paul A. Porter, as Administrator of the Office of Price Administration, having filed his application for appeal herein, now states that as a result of the action taken by this court in dismissing that portion of the plaintiff's action which sought relief against Dusty Rhodes, Sheriff, Tarrant County, Texas, Sully Montgomery, Constable, Precinct No. 1, Tarrant County, Texas, Mrs. Frankie

Mae Page, J. W. Hughes and Mrs. J. W. Hughes, and Mrs. Sophia Chandler, there has intervened in said cause manifest error to his prejudice as Administrator of the Office of Price Administration, an agency of the Government of the United States, in the following respects:

1. The Court committed material error against the Administrator of the Office of Price Administration and against the United States of America in dismissing that portion of the plaintiff's action which sought a preliminary and final injunction against Mrs. Frankie Mae Page, J. W. Hughes and Mrs. J. W. Hughes, and Mrs. Sophia Chandler, on the ground that the Price Control Extension Act of 1946 was invalid as applied to plaintiff's action for a preliminary and final injunction against the afore-mentioned defendants.

265 2. The Court committed material error against the Administrator of the Office of Price Administration and against the United States of America in dismissing that portion of the plaintiff's action which sought a preliminary and final injunction against Dusty Rhodes, Sheriff, Tarrant County, Texas, and Sully Montgomery, Constable, Precinct No. 1, Tarrant County, Texas, on the ground that Section 265 of the Judicial Code prohibited the Court from enjoining state officials in the performance of their duty.

Filed at ———, Texas, this 27 day of September 1946.

LEONARD M. COX.
Reg. Litigation, Atty.
W. R. HERRING.
Special Trial Atty.
Attys. for Plaintiff, Dallas, Texas.

266 In United States District Court

Praecipe for record

Filed September 27, 1946

To: Clerk, United States District Court, Northern District of Texas, Forth Worth Division:

The appellant hereby requests that, in preparing the transcript of the record in the above entitled cause for his appeal to the Supreme Court of the United States, you include the following:

1. Docket entries showing filing of complaint, filing of motion for preliminary injunction, filing of First Amended Complaint, filing of amended motion for preliminary injunction, entry of temporary restraining order, hearing on August 7, 1946, continued

hearing on August 7, 1946, hearing on August 23, 1946, entry of judgment, and entry of stay order pending appeal.

2. Complaint.
3. Motion for preliminary injunction.
4. First Amended Complaint.
5. Amended motion for preliminary injunction.
6. Entry of temporary restraining order.
7. Transcript of hearing on August 5, 1946.
8. Transcript of continued hearing on August 7, 1946.
9. Transcript of hearing on August 23, 1946.
10. Judgment.
11. S order pending appeal.
12. A plication for appeal to the Supreme Court of the United States.
13. Statement of Jurisdiction of the Supreme Court of the United States.
14. Order allowing appeal.
15. Citation.
16. Assignments of error.
17. Praecipe for transcript of record.
18. Proof of service on appellees of application for appeal.
19. Statement to appellees directing their attention to the provisions of Rule 12, Paragraph 3, Rules of the Supreme Court of the United States.

Filed at ———, Texas, this 27 day of September 1946.

LEONARD M. COX,
W. R. HERRING,
Attys. for Plaintiff, Dallas, Texas.

208–211 [Clerk's certificate to foregoing transcript omitted in printing.]

212 Supreme Court of the United States

No. 682, October Term, 1946

Order noting probable jurisdiction

December 9, 1946

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

213 In the Supreme Court of the United States

October Term, 1946

No. 682

Statement of points to be relied upon and designation of record

Filed Jan. 18, 1947

Pursuant to Rule 13, Paragraph 9, Appellant states it intends to rely upon all of the points in its assignment of errors.

Appellant deems the entire record as filed in the above entitled case necessary for consideration of the points relied upon.

George T. Washington,
GEORGE T. WASHINGTON,
Acting Solicitor General.

[File endorsement omitted.]

[Endorsement on cover:] File No. 51546. Northern Texas, D. C. U. S. Term No. 682. Philip B. Fleming, Temporary Controls Administrator, Appellant vs. Dusty Rhodes, Sheriff, Tarrant County, Texas, et al. Filed November 8, 1946. Term No. 682 O. T. 1946.

U. S. GOVERNMENT PRINTING OFFICE: 1947

No. 682

In the Supreme Court of the United States

OCTOBER TERM, 1946

PAUL A. PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, APPELLANT

v.

DUSTY RHODES, SHERIFF, TARRANT COUNTY, TEXAS, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS

STATEMENT AS TO JURISDICTION

STATEMENT AS TO JURISDICTION

In Compliance with Rule 12 of the Supreme Court of the United States, as amended, the plaintiff herein submits his statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the decision of the District Court entered in this cause on August 30, 1946. The application for appeal was filed on September 2, 1946, and is presented to the District Court herewith, to wit, on the 2d day of September, 1946.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this case is conferred by Section 2 of the Act of August 24, 1937, 50 Stat. 752, 28 U. S. C. 349 (a). See *United States* v. *Rock Royal Co-op.*, 307 U. S. 533; *Bowles* v. *Willingham*, 321 U. S. 503.

STATUTES AND REGULATIONS INVOLVED

1. The pertinent portions of the Emergency Price Control Act of 1942, 56 Stat. 23, 50 U. S. C. App. Supp. V, 901 et seq., provide as follows:

> SECTION 2 (d). Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regula-

tion or order, regulate or prohibit speculative or manipulative practices (including practices relating to changes in form or quality) or hoarding, in connection with any commodity, and speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or are likely to result in price or rent increases, as the case may be, inconsistent with the purposes of this Act.

SECTION 4 (a). It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

SECTION 205 (a). Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will con-

stitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

2. The pertinent portions of the Price Control Extension Act of July 25, 1946, Pub. Law No. 548, 79th Cong. 2d Sess., Chapter 671, provide as follows:

SECTION 1. Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 (b) of the Emergency Price Control Act of 1942, as amended, is amended by striking out "June 30, 1946" and substituting "June 30, 1947."

SECTION 18. (1) The provisions of this Act shall take effect as of June 30, 1946, and (2) all regulations, orders, price schedules, and requirements under the Emergency Price Control Act of 1942, as amended (except regulations or requirements under section 2 (e) thereof relating to meat, flour, or coffee), and the Stabilization Act of 1942, as amended, which were in effect on June 30, 1946, shall be in effect in the same manner and to the same extent

as if this Act has been enacted on June 30, 1946, and (3) any proceeding, petition, application, or protest which was pending under the Emergency Price Control Act of 1942, as amended, or the Stabilization Act of 1942, as amended, on June 30, 1946, shall be proceeded with and shall be effective in the same manner and to the same extent as if this Act has been enacted on June 30, 1946: Provided, That in any case in which the Emergency Price Control Act of 1942, as amended (except sections 204 and 205), or the Stabilization Act of 1942, as amended (except sections 8 and 9), or any regulation, order, or requirement under either of such Acts, prescribes any period of time within which any act is required or permitted to be done, and such period had commenced but had not expired on June 30, 1946, such period is hereby extended for a number of days equal to the number of days from July 1, 1946, to the date of enactment of this Act, both inclusive: Provided further, That no act or transaction, or omission or failure to act, occurring subsequent to June 30, 1946, and prior to the date of enactment of this Act shall be deemed to be a violation of the Emergency Price Control Act of 1942, as amended, or the Stabilization Act of 1942, as amended, or of any regulation, order, price schedule, or requirement under either of such Acts: Provided further, That insofar as the provisions of this Act require

the Administrator to make any change in any maximum price, such provisions shall not be deemed to require such change to be made before the thirtieth day following the date of enactment of this Act.

3. The pertinent portions of the Rent Regulation for Housing (8 F. R. 7322: 10 F. R. 11666; 11 F. R. 5824, 8106) provide as follows:

SECTION 6. *Removal of tenant*—(a) Restrictions on removal of tenant. So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and regardless of any contract, lease, agreement or obligation heretofore or hereafter entered into which provides for entry of judgment upon the tenant's confession for breach of the covenants thereof or which otherwise provides contrary hereto, * * * (here follow a number of specific exceptions not pertinent here).

(b) *Administrator's certificate*—(1) Removals not inconsistent with Act or regulation. No tenant shall be removed or evicted on grounds other than those stated above unless, on petition of the landlord, the Administrator certifies that the landlord

may pursue his remedies in accordance with the requirements of the local law. The Administrator shall so certify if the landlord establishes that removals or evictions of the character proposed are not inconsistent with the purposes of the Act or this regulation and would not be likely to result in the circumvention or evasion thereof. The certificate shall authorize the pursuit of local remedies at the expiration of six months after the date or filing of the petition unless the Area Rent Director has determined that a three months' period is adequate for the purposes of the Act in the particular area in issuing certificates under section 6 (b) (2), in which event the applicable period shall be three months. Within the discretion of the Area Rent Director the certificate may authorize the pursuit of local remedies for the removal or eviction of the tenant at a time less than six or three months, as the case may be, after the date of the filing of the petition if the petitioner establishes that unusual hardship would otherwise result, or that a lesser period in the particular case is consistent with the purposes of the regulation and the Act.

Subsection (b) (2) provides for the issuance of a certificate for occupancy by a purchaser, and subsection (b) (3) provides for the issuance of a certificate for occupancy by a purchaser of stock in a cooperative. Subsection (c) provides other exceptions not here relevant.

(d) *Notices required*—(1) Notices prior to action to remove tenant. Every notice to a tenant to vacate or surrender possession of housing accommodations shall state the ground under this section upon which the landlord relies for removal or eviction of the tenant and the facts necessary to establish the existence of such ground. A written copy of such notice shall be given to the area rent office within 24 hours after the notice is given to the tenant.

No tenant shall be removed or evicted from housing accommodations by court process or otherwise, unless at least ten days (or, where the ground for removal or eviction is non-payment of rent, the period required by the local law for notice prior to the commencement of an action for removal or eviction in such cases, but in no event less than three days) prior to the time specified for surrender of possession and to the commencement of any action for removal or eviction, the landlord has given written notices of the proposed removal or eviction to the tenant and to the area rent office, stating the ground under this section upon which such removal or eviction is sought, the facts necessary to establish the existence of such ground and specifying the time when the tenant is required to surrender possession: Provided, however, That the requirement of this sentence shall not apply to housing accommodations within the City of Baltimore, Maryland, the

Northeastern New Jersey Defense-Rental Area, or the Trenton Defense-Rental Area, when the ground for the removal or eviction of a tenant is non-payment of rent.

If judgment for possession is sought by virtue of a confession of judgment or a warrant of attorney authorizing confession of such judgment against the tenant, the date of commencement of the action as referred to in this section shall be deemed to be the date of the filing in court of the first papers in the proceedings for the entry of such judgment.

Where the ground for removal or eviction of a tenant is non-payment of rent, every notice under this paragraph (d) (1) shall state the rent for the housing accommodations, the amount of rent due and the rental period or periods for which such rent is due. The provisions of this paragraph (d) (1) shall not apply if the eviction is pursuant to a certificate issued by the Administrator under the provisions of paragraph (b) of this section.

(2) Notice at time of commencing action to remove tenant. At the time of commencing any action to remove or evict a tenant, including an action based upon non-payment of rent, the landlord shall give written notice thereof to the Area Rent Office stating the title of the case, the number of the case where that is possible, the court in which it is filed, the name and address of the tenant, and the ground

under this section on which removal or eviction is sought.

(e) Local Law. No provision of this section shall be construed to authorize the removal of a tenant unless such removal is authorized under the local law.

SCHEDULE A—DEFENSE-RENTAL AREAS

Name of defense-rental area	State	County or counties in defense-rental area under Rent Regulation for Housing	Maximum rent date	Effective date of regulation	Date by which registration statement to be filed (inclusive)
(316)	Fort Worth, Tex.	Tarrant	3 1-42	(1)	12-16-42

[1] Sections 1, 6, 13, Oct. 15, 1942; remaining sections, Nov. 1, 1942.

THE ISSUES AND RULING BELOW

The Emergency Price Control Act of 1942 expired June 30, 1946, and on July 25, 1946, was reenacted and extended to June 30, 1947, by the Price Control Extension Act of 1946. Section 18 of the latter Act provided among other things that (1) the Act was to take effect as of June 30, 1946, and all regulations under the Emergency Price Control Act (with certain exceptions not including the Rent Regulation for Housing) which were in effect on June 30, 1946, were to be in effect in the same manner and to the same extent as if the 1946 Act had been enacted on June 30, 1946, and (2) no transaction, act, or failure to act occurring between June 30, 1946, and July 25, 1946, was to be deemed a violation of

the Emergency Price Control Act or of any regulation thereunder. Section 6 of the Rent Regulation for Housing, both prior to and after July 25, 1946, prohibited—with certain exceptions not material here—eviction from housing accommodations of tenants who continued to pay the rent.

The First Amended Complaint, filed by the Price Administrator in the United States District Court for the Northern District of Texas, Fort Worth Division, alleged (and this was nowhere denied by defendants) that the defendants had proceeded with eviction suits in the Justice of the Peace court in Precinct No. 1, Tarrant County, Texas, without coming within one of the stated exceptions in the Regulation, and without giving the notices required by Section 6 thereof, and hence an injunction should issue under Sections 205 (a) and (c) of the Emergency Price Control Act to restrain such evictions. The portion of the judgment giving rise to the constitutional adjudication sought to be reviewed is the denial of a temporary injunction against the defendant landlords, Page, Hughes and Chandler on the ground that they had obtained judgments of eviction prior to July 25, and as applied to such judgments the Price Control Extension Act of 1946 and the Regulation were invalid.

The various procedural steps in the proceeding were as follows:

On August 5, 1946, there was a hearing of plaintiff's motion for a preliminary injunction in the federal district court action against Gus Brown, Justice of the Peace for Precinct No. 1, Tarrant County, Texas, Dusty Rhodes, Sheriff of Tarrant County, Texas, and Sully Montgomery, Constable for Precinct No. 1, Tarrant County, Texas, to restrain them from evicting certain tenants in the Fort Worth Defense-Rental Area whose landlords had prosecuted or were prosecuting eviction actions against them in the Court of Gus Brown. The court announced that the landlords involved would be proper parties to the suit, and continued the hearing until August 7. On that date, the plaintiff filed, with leave of court, its First Amended Complaint and Motion for Preliminary Injunction. The First Amended Complaint prayed for a temporary restraining order and a preliminary and final injunction against the aforesaid Gus Brown, Dusty Rhodes and Sully Montgomery, and against the various named landlords who were alleged to have prosecuted eviction actions in the Court of Gus Brown without complying with the provisions of Section 6 of the Rent Regulation for Housing. The Motion for Preliminary Injunction requested a preliminary injunction against the defendants named in the Amended Complaint, restraining them from further prosecution, or trial, or issuing or procuring the issuance of any writ of restitution until

the provisions of the Rent Regulation for Housing had been complied with, or from issuing any process to enforce any judgment or from issuing or enforcing any writ of restitution in any of the Justice Court proceedings listed.

A temporary restraining order was issued on August 7, 1946, and hearing was set for August 23, 1946. On the latter date Mrs. Sophia Chandler, a plaintiff in two additional eviction suits in Gus Brown's Court, who had not been named as a defendant, was permitted to intervene. On consent of plaintiff's counsel, Justice of the Peace Gus Brown was dismissed from the suit. After hearing argument of counsel, the court ruled on August 30, 1946: (1) that an injunction should issue against certain defendants who had instituted eviction proveedings between June 30 and July 25, 1946, but had not obtained judgment during that period; (2) that the action should be dismissed as to certain defendants whom the court found had either complied with the Regulation or dismissed their eviction proceedings; (3) that the action should be dismissed as to Dusty Rhodes and Sully Montgomery, Sheriff and Constable, respectively, on the ground of a "comity" which the judge thought had been written into law by Section 265 of the Judicial Code (Typewritten Transcript, 34); (4) that the injunction should be denied as to three landlords who in four suits obtained judgments of eviction prior to July 25,

1946, the court stating: "The Court concludes that as to all of said above mentioned four eviction suits that the provisions of the Price Control Extension Act of 1946 and of the Rent Regulation for Housing are invalid, and the Court concludes that a judgment recovered before July 25, 1946 in an eviction suit prosecuted according to the state laws of Texas should be respected, and that the court will not issue an injunction."[1] Further indication that the court was ruling on the constitutionality of the statute as well as the regulation may be found in the Transcript.[2]

THE QUESTIONS ARE SUBSTANTIAL

1. The holding that the provisions of the Price Control Extension Act of 1946 which render vio-

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[1] The court's reasoning appears in the Typewritten Transcript, pp. 35–36:

"* * * But, aside from these penal provisions, and whether it comes under the provision of the Constitution, in reference to expost facto law, it is the view of the court that when a man takes a judgment of the court, that was lawful at the time, it becomes a vested right, just as much so as if he had taken a deed of conveyance that was lawful at the time.

"Therefore, all judgments that were rendered, and become final before a new law on the OPA was enacted, this court is inclined to respect, and to treat them as vested rights, and as not coming directly under the Constitutional inhibitions of expost facto law, because of the penal provision of the Statute."

[2] Pp. 36–37:

"Mr. Gruber. Are you ruling, Your Honor, in connection with this, landlords who had obtained judgments before July 25, that the regulation is invalid, which prevents such evic-

lative the enforcement of a judgment of eviction obtained before the enactment of that Act constitute an invalid interference with vested rights, is in conflict with the decisions of other courts. *Porter* v. *Mund, et al.*, S. D. Ohio, August 21, 1946; *Porter* v. *Ayers*, M. D. Tenn., August 2, 1946; *Porter* v. *Noer*, S. D. Ohio, August 16, 1946; *Porter* v. *Repar, et al.*, N. D. Ohio, August 19, 1946; *Porter* v. *Riley*, D. Me., September 10, 1946, all as yet unreported; cf. *Porter* v. *Merhar* (C. C. A. 6th, August 6, 1946).[3]

This decision likewise conflicts with decisions of the Supreme Court which hold that rights acquired by a party pursuant to a state court judgment may be divested when sufficiently strong considerations of federal policy are present. See *Wright* v. *Union Central Life Ins. Co.*, 304 U. S. 502, in which an Act of Congress altered the terms of the period allowed for redemption in a judgment of foreclosure of a mortgage. This Court

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tion, or the Emergency Price Control Act itself is invalid?

"The Court. Yes, I ruled as to those suits, that that provision that undertook to have included those cases, by having its provision made retroactive in there, is not valid.

"Mr. Gruber. That the Act itself is invalid?

"The Court. That it is invalid as to those suits.

"Mr. Gruber. You are not ruling, then, just to the regulation?

"The Court. No."

[3] The District Court refused to issue a preliminary injunction; Judge Miller of the Circuit Court of Appeals then granted an injunction ordering the landlord to restore possession to the evicted tenant, pending the appeal.

has held similarly in cases where the state legislature was qualifying the effect of judgments of its own courts, or Congress was doing the same with respect to federal courts. See *Missouri & Arkansas L. & M. Co.* v. *Greenwood District*, 249 U. S. 170, in which it was held that a state might constitutionally reduce the rate of interest prescribed in a judgment, after the judgment had been rendered; *Carpenter* v. *Wabash Railway Co.*; 309 U. S. 23, in which a statutory amendment changing the priorities of claims in railroad equity receiverships was upheld and applied so as to reverse the judgment in a case which at the time of the change was pending on certiorari before the Supreme Court, and wherein that Court assumed that the judgment below was correct when rendered; (cf. *Paramino Lumber Co.* v. *Marshall*, 309 U. S. 370, in which a private Act of Congress reopened a compensation case in which an award had already been made). The same has been held as to "vested" rights arising from contract, which are likewise subject to the power of Congress or the States to abrogate where the public welfare so demands. "And contracts between private parties cannot create vested rights which serve to restrict and limit an exercise of a constitutional power of Congress." *Guaranty Trust Co.* v. *Henwood*, 307 U. S. 247, 258; see also *Louisville & Nashville R. R.* v. *Mottley*, 219 U. S. 467; *Milliken* v. *United States*,

283 U. S. 15, 23; *Norman* v. *Baltimore & Ohio R. R.*, 294 U. S. 240; *Home Building & Loan Assoc.* v. *Blaisdell*, 290 U. S. 398. And in *Taylor* v. *Brown*, 137 F. 2d 654, certiorari denied, 320 U. S. 787, the Emergency Price Control Act itself, as applied to pre-existing leases, was upheld over the contention that its invalidly abrogated vested contractual rights. No substantial distinction can be drawn in this connection between vested contractual rights and rights based on a judgment.

It is noteworthy that whatever vested rights may have accrued under the judgments of eviction involved in the instant case were acquired at a time when the parties thereto—along with the entire nation—had knowledge of the imminent possibility of a price control extension act, and virtual certainty of the extension of rent control. Hence they can hardly say that they acquired these rights in reliance on the continued absence of rent control. Lack of such reliance has frequently been held to be a ground for sustaining legislation which operated adversely upon rights previously acquired. Cf. *Welch* v. *Henry*, 305 U. S. 134, 147; *Chase Securities* v. *Donaldson*, 325 U. S. 304, 316; Stone, Brandeis and Holmes, JJ., concurring in *Untermyer* v. *Anderson*, 276 U. S. 440, 446–7; see Stimson, Retroactive Operation of Law—A

Problem in Constitutional Law, 38 Mich. L. Rev., 30, 39.[4]

2. The issue is an extremely important one. A large number of similar cases are pending; and the demoralizing and dislocating effect upon many communities which a flood of evictions would have, is apparent.[5]

3. This appeal is from such portion of the judgment of the District Court as dismisses the suit against Dusty Rhodes, Sheriff, Sully Montgomery, Constable, and Frankie Mae Page, J. W. and Mrs. J. W. Hughes, and Mrs. Sophia Chandler. If this appeal is granted, the Administrator

[4] Nor can it be argued that the Price Control Extension Act was intended to permit one who obtained a judgment of eviction before July 25, 1946, to enforce it after that date, and that hence the court below has misconstrued the statute. In addition to the plain language of Section 18, continuing in effect the prohibitions against eviction in the Regulation and stating the Act was to be considered as though having been passed without an interim period, an administrative interpretation was issued contemporaneously with the enactment of the statute which expressly covers the situation involved in this case and described defendants' conduct as a violation. See Interpretation 6–VI, *infra*, pp. 29–31.

[5] The decision in the instant case would also serve to render invalid the Price Control Extension Act of 1946 in so far as (through the operation of Section 18, supra, and its reenactment of Section 4 of the Emergency Price Control Act, supra) it forbids delivery at overceiling prices after July 25, 1946, where the sale has been made before that date. The typical price regulation prohibits sales or deliveries at overceiling prices; the sale and delivery are separate violations. See *Schreffler* v. *Bowles*, 153 F. 2d 1 (C. C. A. 10th), certiorari denied June 10, 1946, No. 1124, October Term, 1945.

intends to contest, in addition to the constitutional issue raised, the question of the correctness of the court's decision that under Section 265 of the Judicial Code is could not enjoin state officials from executing eviction judgments rendered contrary to federal law. See *Bowles* v. *Willingham*, 321 U. S. 503; *Porter* v. *Dicken*, May 27, 1946, No. 1118, October Term 1946;[6] *Brown* v. *Wright*, 137 F. 2d 489 (C. C. A. 4th), and *Bowles* v. *Hall*, 63 F. Supp. 826 (W. D. Pa.), in all of which the injunction under the Emergency Price Control Act ran against the landlord and the sheriff; and also *Porter* v. *Lee*, May 27, 1946, No. 1117, October Term, 1945, and *Brown* v. *Wick & Campbell*, 48 F. Supp. 887, in which it ran against the landlord and justice of the peace.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

GEORGE MONCHARSH,
Deputy Administrator for Enforcement,
Office of Price Administration.

Filed, September ——, 1946.

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[6] In this case Mr. Justice Reed issued the requested injunction pending the outcome of certiorari proceedings; the opinion of this Court approving the injunction does not discuss the propriety of enjoining defendants who were not landlords; nor do the cases above cited discuss the point.

In the District Court of the United States for the Northern District of Texas, Fort Worth Division

Civil Action No. 1180

PAUL A. PORTER, ADMINISTRATOR OFFICE OF PRICE ADMINISTRATION, COMPLAINANT

v.

GUS BROWN; *et al.*, DEFENDANTS

JUDGMENT

On this Fifth Day of August 1946 came on for hearing before the Court at Dallas, Texas the Complainant's Motion for Preliminary Injunction against Gus Brown, Justice of the Peace, Dusty Rhodes, Sheriff, and Sully Montgomery, Constable, all of Tarrant County, Texas, and the Complainant appeared by attorneys W. S. Margowski, Lowell D. Gibbons, and Louis C. Ross, and the Defendant Gus Brown appeared by attorney J. L. Winters and Doss Hardin, and Walter J. Donnelly, landlord in one of the eviction suits, through his attorney Lloyd Price asked and was granted leave to intervene in this suit in connection with the eviction suit of *Walter J. Donnelly* vs. *W. P. Lindsey* No. 11477 pending in Gus Brown's Court, and the Court, after hearing the pleadings read and the evidence and argument of counsel, the Court announced that the landlords would be proper parties to the suit and continued the hearing on the Motion for Pre-

liminary Injunction and reset the hearing at Fort Worth, Texas on August 7, 1946 and that at the hearing on August 7, 1946 at Fort Worth, Texas the same parties appeared in person and by attorneys but the Complainant was further represented by Irving Gruber, Chief General Litigation Attorney from Washington, D. C., and at this hearing the Complainant asked and was granted leave of Court to file an amended Complaint and an amended Motion for Preliminary Injunction in which the defendant-landlords in said eviction suits had been made parties, and upon request of counsel the hearing on said Motion for Preliminary Injunction was reset by the Court at Fort Worth, Texas on August 23, 1946, and it further appeared to the Court at the hearing at Fort Worth on August 23, 1946 that some of the parties had accepted service of the amended Motion for Preliminary injunction and notice of said hearing in Open Court, and it further appeared to the Court that the Defendant-landlords had been served with process and a copy of the amended Motion setting the hearing on the amended Motion for Preliminary Injunction at Fort Worth on August 23, 1946 and at this hearing before the Court on August 23, 1946, the Complainant appeared by attorneys Irving Gruber, W. S. Margowski, and Louis C. Ross, and the defendant Walter J. Donnelly appeared by attorney Lloyd Price and the defendants Mrs.

Morrow, Mrs. O. O. Black, and Mrs. J. E. Brooks appeared by attorney Frank Graves, and the Defendant F. A. Bailey appeared by attorney Hal S. Lattimore, and the defendants J. C. Malone and Anna Billings appeared by attorney Dave Miller, and the defendant J. A. Shellberg appeared by attorney WArd Bailey, and the defendant Mrs. Frankie Mae Page appeared by attorney Frank Crumley and the defendant Mrs. Maude Gregory appeared by attorney Joseph Orr, and E. L. Gilbert, attorney, appeared for Mrs. Sophia Chandler, and asked and was granted leave to intervene for and on behalf of Mrs. Sophia Chandler in connection with two eviction suits in Gus Brown's Court as follows:

No. 11392—*Mrs. Sophia Chandler* vs. *Nora Gorell.*

No. 11406—*Mrs. Sophia Chandler* vs. *Mrs. Pattie Little.*

That Complainant announced to the Court that it would not further urge its Motion for Preliminary Injunction as against the defendant Gus Brown, Justice of the Peace in and for Tarrant County, Texas.

The Court, after hearing the Motions read and the evidence and argument of Counsel, finds and concludes as follows:

It is ordered that the defendant Gus Brown, Justice of the Peace in and for Tarrant County, Texas be and he is hereby dismissed from said suit.

The Court finds that the defendant Dusty Rhodes, Sheriff, and Sully Montgomery, Constable of Tarrant County, Texas were performing the duties of their office imposed by the State Laws of Texas in executing any process or orders issued on said Judgments recovered during the interim period, and the Court concludes as a matter of comity said state officers should not be enjoined by this Court from the performance of their duties. It is therefore ordered that the Complainant's Motion for Preliminary Injunction against Dusty Rhodes, Sheriff, and Sully Montgomery, Constable, of Tarrant County, Texas be and the same is hereby denied.

The Court finds that the defendant F. A. Bailey in connection with the eviction suit No. 11468 filed in Gus Brown's court against Jack Fletcher, that said defendant has complied with the Rent Regulation requirements as to grounds of eviction and notices necessary to evict a tenant, and the Court concludes that the said defendant should be dismissed from this suit and that no Preliminary Injunction shall issue against him. It is therefore ordered that the said F. A. Bailey be and he is hereby dismissed from this suit.

The Court finds that the defendant J. A. Shellberg in connection with the eviction suit No. 11479 against W. M. Manor, Jr. pending in Gus Brown's Court, that said defendant has complied with the Rent Regulation requirements as to the

grounds of eviction and notices necessary to evict a tenant and the Court concludes that said landlord should be dismissed from this suit, and that no Preliminary injunction shall issue against him. It is therefore ordered that the said J. A. Shellberg be and he is hereby dismissed from this suit.

The Court finds that the defendant J. C. Maloney in connection with the eviction suit No. 11487 against Mary Hemphill pending in Gus Brown's Court filed on July 25, 1946 was dismissed by the Plaintiff on August 6, 1946 and the tenant is still in possession, and the Court concludes that the question of issuing a Preliminary Injunction as to the said suit is moot. It is therefore ordered that the Complainant's Motion for Preliminary Injunction against J. C. Maloney be and the same is hereby denied.

The Court finds that the defendant Mrs. Anna Billings in connection with the eviction suit No. 11373 against Carlisle Garlitz that the Judgment recovered on July 30, 1946 was set aside and said suit dismissed, and the Court concludes that the question of issuing a Preliminary Injunction as against said defendant is moot. It is therefore ordered that the Complainant's Motion for Preliminary Injunction as against Anna Billings be and the same is hereby denied.

The Court finds that the defendant Mrs. Sallie Morrow in connection with the eviction suit No.

11466 against Miss Merrell Burnam that the Plaintiff voluntarily dismissed said suit and started a new eviction suit in compliance with the Rent Regulations, and the Court concludes that the question of issuing a Preliminary Injunction against the defendant Mrs. Sallie Morrow is moot. It is therefore ordered that the Complainant's Motion for Preliminary Injunction as against Mrs. Sallie Morrow be and the same is hereby denied.

The Court finds that the defendant O. O. Black in connection with the eviction suit no. 11488 against James L. Bunnell, that said suit was dismissed and a new suit started in compliance with the Rent Regulations, and the Court concludes that the question of issuing a Preliminary Injunction is moot. It is therefore ordered that the Complainant's MOtion for a Preliminary Injunction as against the defendant O. O. Black be and the same is hereby denied.

The Court finds that the defendant J. E. Brooks in connection with the eviction suit No. 11478 against O. W. Turmon, that the Plaintiff has dismissed this suit and a new suit has been filed in compliance with the Rent Regulations, and the Court concludes that the question of issuing a Preliminary Injunction against said defendant is moot. It is therefore ordered that the Complainant's Motion for a Preliminary Injunction as against the defendant J. E. Brooks be and the same is hereby denied.

The Court finds that the defendant Mrs. Maude Gregory in connection with the eviction suit No. 11482 against C. T. Meroney, that the defendant had dismissed said suit on August 8, 1946, and the Court concludes that the question of a Preliminary Injunction against the defendant is moot. It is therefore ordered that the Complainant's Motion for a Preliminary Injunction against the defendant Mrs. Maude Gregory be and the same is hereby denied.

The Court finds that the defendants J. W. and Mrs. J. W. Hughes in connection with the eviction suit No. 11372, that a Judgment was recovered on July 12, 1946 for possession of said property; and the Court finds that the defendant Mrs. Frankie Mae Page in connection with the eviction suit No. 11439, that a Judgment was recovered on said suit July 23, 1946; and the Court finds in the eviction suit No. 11392 of *Mrs. Sophia Chandler* vs. *Nora Gorrell* that a Judgment was recovered in said suit July 15, 1946; and the parties agreed that a writ of restitution was not to issue before August 16, 1946; and the Court finds that in connection with the eviction suit No. 11406 of *Mrs. Sophia Chandler* vs. *Pattie Little* that a Judgment was recovered on July 17, 1946, and the parties agreed that a writ of restitution was not to issue before August 16, 1946, and the Court concludes that as to all of said above-mentioned four eviction suits that the provisions of the Price Control Extension Act of 1946 and of the Rent

Regulations for Housing are invalid, and the Court concludes that a Judgment recovered before July 25, 1946 in an eviction suit prosecuted according to the State Laws of Texas should be respected, and that the Court will not issue an injunction. It is therefore ordered that the Complainant's MOtion for Preliminary Injunction against Mrs. Frankie Mae Page, J. W. and Mrs. J. W. Hughes, and Mrs. Sophia Chandler be and the same is hereby denied.

The Court finds that the defendant Walter J. Donnelly in connection with the eviction suit No. 11477 against W. P. Lindse, that said suit was filed July 16, 1946, and that on July 30, 1946, the said parties and their attorneys appeared in Court and agreed that an agreed Judgment should be entered in said suit for possession of the property on July 30, 1946, and the Writ of Restitution would be withheld for thirty days, and the Court concludes that said agreed Judgment entered by said parties after July 25, 1946, should be respected by this Court, and will, therefore, not be enjoined. It is therefore ordered that the Complainant's Motion for a Preliminary Injunction against the defendant Walter J. Donnelly be and the same is hereby denied.

The Court finds that the defendant-landlords named below in connection with the eviction suits described below have filed said eviction suits during the interim period from July 1, 1946, to July 25, 1946, without complying with the Rent Regu-

lations as to the grounds of eviction and the required notices and had not recovered JUdgement in said suits on or before July 25, 1946, said landlords in suits being described as follows, and said suits being filed and pending in the Court of Gus Brown, Justice of the Peace of Tarrant County, Texas:

No. 11469—*R. M. Riley* vs. *Robert Ladd.*

No. 11470—*D. E. Barnhill* vs. *J. C. Nicholson.*

No. 11483—*Beatrice & Clyde Robertson* vs. *Lela Ward.*

No. 11467—*O. B. Wood* vs. *Paul Courtney.*

No. 11471—*Della French* vs. *B. N. Carrold.*

No. 11474—*C. W. Stover* vs. *Walton Parker.*

No. 11475—*Charles Bembrey* vs. *Leroy Williams.*

No. 11464—*Mrs. E. McCord* vs. *Jack Childress.*

No. 11480—*Mr. D. M. Hazelwood* vs. *R. M. Bartlett.*

No. 11481—*Mrs. Henrietta Woodward* vs. *Mrs. Lock Wicker.*

No. 11474—*P. H. Rice* vs. *M. F. Newman.*

No. 11485—*Ethel C. Cantley* vs. *Charlie Burns.*

No. 11489—*M. E. Dove* vs. *Carl Phillips.*

No. 11480—*A. E. Wolcott* vs. *P. Preston.*

No. 11486—*Sam Johnson* vs. *Jimmie Wright.*

And the Court concludes that the provisions of the Price Control Extension Act of 1946 and the Rent Regulations for Housing apply to all of said suits, and the landlords therein should be enjoined.

It is therefore ordered that the defendants R. M. Riley, D. E. Barnhill, Beatrice & Clyde Robertson, O. B. Wood, Della French, C. W. Stover, Charles Bembrey, Mrs. E. McCord, Mrs. D. M. Hazelwood, Mrs. Henrietta Woodward, P. H. Rice, Ethel C. Cantley, M. E. Dove, A. E. Wolcott, and Sam Johnson, their agents, servants, employees, attorneys, and all persons in active concert or participation with them be and each of them are hereby enjoined and restrained from the further prosecution of said eviction suits described above and from evicting or attempting to evict the tenants therein named and set forth above in said suits and be restrained from further prosecution of said eviction suits and from issuing, executing and/or causing to be issued or executed a writ of restitution to evict any tenant in any of said above described suits.

Entered at Dallas, Texas, this 30th day of August, 1946.

(S) T. WHITFIELD DAVIDSON,
Judge.

Approved as to Form.

(S) W. S. MARGOWSKI.
H. S. LATTIMORE.
M. WARD BAILEY.
LLOYD E. PRICE.
E. L. GILBERT.
JOE F. ORR.
FRANK CRUMLEY.
FRANK R. GRAVES.
J. ELWOOD WINTERS.

2. Interpretation 6–VI, July 25, 1946.

OFFICE OF PRICE ADMINISTRATION

WASHINGTON 25, D. C., (32)

Memorandum

To: All Regional Rent Executives, Regional Rent Attorneys, Area Rent Directors and Area Rent Attorneys.

From: Robert A. Sauer, Acting Associate General Counsel for Rent.

Subject: Interpretation 6–VI—*Evictions Pending on July 25, 1946.*

The Emergency Price Control Act of 1942, as amended, on July 25, 1946, was extended by striking out "June 30, 1946" and substituting "June 30, 1947", as the expiration date of the Act. Section 18 provides that the provisions of the Act shall take effect as of June 30, 1946. In this section a savings clause was inserted for the protection of persons who had acted contrary to the regulation during the interim period between June 30, 1946, and July 25, 1946. This savings clause provides that no act or transaction occurring between said dates shall be deemed a violation. As a result any eviction which occurred during the interim period was not a violation of the Act or regulation. By reason of this the tenant who has been in fact evicted during this interim period received no protection. If, however, he is in possession on July 25, 1946, he is entitled to the pro-

tection of the eviction provisions of the regulation and it is a violation of the regulation for the landlord on or after that date to attempt to evict by court process or otherwise except in accordance with the provisions of Section 6 of the regulation.

ILLUSTRATIONS

1. L had no ground under the regulation for eviction. On July 1, L instituted an eviction suit in the local court, obtained final judgment and writ of possession and obtained T's eviction prior to July 25, 1946. Even though L's action was contrary to Section 6 of the rent regulation, it is provided in the Act that his eviction of T shall not be deemed a violation, and the eviction is valid.

2. L is a veteran who owned the housing accommodations prior to October 20, 1942, and who sought in good faith immediate possession of the premises as a dwelling for himself. L complied with Section 6 of the regulation and obtained final judgment on July 15, 1946. However, T was still in possession on July 25, 1946. Since L has complied with the regulation, his eviction of T by utilizing the processes of the court under the judgment obtained is not a violation.

3. L had no ground for eviction under the regulation and did not comply with the notice requirements of Section 6 (d). L instituted suit on July 1, 1946, and obtained judgment for eviction

on July 15, 1946, under the local law, but T was still in possession, on July 25, 1946. Even though L's act in instituting suit and obtaining judgment is not a violation of the regulation by reason of the savings clause in the Act it is nevertheless a violation of the regulation for L after July 25, 1946, to attempt to evict T by the utilization of court processes or otherwise except in accordance with the regulation. This is true even though L has obtained final judgment for eviction in the local court. It would be a violation for L to attempt T's eviction by utilizing an execution or writ of possession which had been stayed by the court until after July 25, 1946, or for L to attempt to evict T through an execution or writ of possession which had been issued before said date but not in fact executed.

4. L obtained a cerificate relating to eviction under Section 6 (b) (2) effective six months from June 1, 1946. On July 1, 1946, L instituted an eviction action and obtained judgment on July 15, 1946, but T was still in possession on July 25, 1946. Although L's action in instituting suit was not a violation by reason of the savings clause in the Act, any attempt by L to evict T on or after July 25, 1946, by the utilization of court processes or otherwise is a violation of the regulation. L can, of course, proceed to evict under local law at the expiration of six months from June 1, 1946.

(Issued July 25, 1946.)

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No. 682

In the Supreme Court of the United States

OCTOBER TERM, 1946

PHILIP B. FLEMING, TEMPORARY CONTROLS ADMINISTRATOR, APPELLANT

v.

DUSTY RHODES, SHERIFF, TARRANT COUNTY, TEXAS, ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS

BRIEF FOR THE APPELLANT

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v.

DUSTY RHODES, SHERIFF, TARRANT COUNTY, TEXAS, ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS

BRIEF FOR THE APPELLANT

OPINION BELOW

The court below rendered no opinion. Its findings of fact and conclusions of law appear at pp. 86–91 of the Record.

JURISDICTION

The judgment of the District Court was filed on August 31, 1946 (R. 86–91). Application for appeal was filed on September 27, 1946, and the appeal was allowed on September 28, 1946 (R. 94–95). Probable jurisdiction was noted by this Court on December 9, 1946 (R. 97).

The jurisdiction of this Court rests on Section 2 of the Act of August 24, 1937, 50 Stat. 752, 28 U. S. C. 349a.

QUESTIONS PRESENTED

1. Whether the Price Control Extension Act of 1946 is unconstitutional in so far as it prohibits a landlord, after the date of its enactment, from securing execution of an eviction judgment without compliance with the requirements of the Rent Regulation, where the judgment was obtained during the period of suspension of controls (July 1–July 25, 1946).

2. Whether the sheriff and constable who threatened to execute a judgment of eviction of the State court should have been enjoined from so proceeding, along with the landlords involved.

STATUTES AND REGULATION INVOLVED

The statutes and regulation involved are the Emergency Price Control Act of 1942, as amended, in particular by the Price Control Extension Act of 1946, and the Rent Regulation for Housing. The pertinent portions thereof are set forth in the Appendix, *infra*, pp. 23–29.

STATEMENT

The Emergency Price Control Act, as amended, 56 Stat. 23, 58 Stat. 632, 59 Stat. 306, 50 U. S. C. App., Supp. V, 901, *et seq.*, expired on June 30, 1946, as the result of a Presidential veto of a proposed extension law. After that date a number of landlords in the Fort Worth, Texas, De-

fense-Rental Area commenced proceedings in a State court to evict certain of their tenants without having complied with the provisions of the Rent Regulation for Housing which had been in force until the expiration of the Emergency Price Control Act. In some instances the judgments of eviction had been obtained by July 25, 1946, and in others they had not yet been entered. On that date the Price Control Extension Act of 1946 was enacted. Section 1 thereof, *infra*, p. 24, extended the Emergency Price Control Act to June 30, 1947. Section 18, *infra*, pp. 24–25, provided, among other things, that the Act was to take effect as of June 30, 1946, and that (with exceptions not here pertinent) all regulations in force on that date were to be in effect in the same manner and to the same extent as if the Act had been enacted on June 30, 1946, but that no transaction, act, or failure to act occurring between June 30, 1946, and July 25, 1946, was to be deemed a violation. Section 6 of the Rent Regulation for Housing, *infra*, pp. 26–29, both on June 30, 1946, and after July 25, 1946, prohibited (with certain exceptions not here material) eviction from housing accommodations of tenants who continued to pay their rent, unless the landlord had obtained from the Administrator a certificate authorizing him to pursue his remedies in accordance with the local law. Appellees Page, Hughes, and Chandler, who were landlords, had, without having received certificates as pro-

vided by the regulations, obtained judgments of eviction before July 25, 1946, in the court of Gus Brown, Justice of the Peace for Precinct No. 1, Tarrant County, Texas, against tenants who had continued to pay their rent. These landlords, after July 25, 1946, attempted to enforce such judgments, and appellees Rhodes and Montgomery, sheriff and constable, respectively, of Tarrant County, Texas, were about to execute the judgments. Various other landlords obtained judgments of the same character after July 25, 1946, without having complied with the Rent Regulation. On July 31, 1946, the then Price Administrator brought a suit against Justice of the Peace Brown, Sheriff Rhodes, and Constable Montgomery in the United States District Court for the Northern District of Texas to enjoin the attempts made in Justice of the Peace Brown's court after July 25, 1946, by landlords who had not complied with the Rent Regulation, to evict their tenants (R. 4–10).

At a hearing on the Administrator's motion for a preliminary injunction, held on August 5, 1946, the court below agreed that the landlords would be proper parties to the suit, and continued the hearing until August 7 (R. 44). On the latter date, the Administrator, with leave of court, filed an amended complaint, making the various landlords involved parties to the suit, and requesting that

they also be enjoined from attempting to evict their tenants until they had complied with the applicable provisions of the Rent Regulation (R. 12–18). On August 23, 1946, counsel for the Administrator agreed that the suit might be dismissed as to Justice of the Peace Brown (R. 55), and on that date the hearings were closed (R. 86). On August 30, 1946, the court ruled: (1) that an injunction should issue against certain of the defendants who had not obtained eviction judgments prior to July 25, 1946: (2) that the action should be dismissed as to certain of the defendants who had complied with the regulations or had dismissed their eviction proceedings; (3) that the action should be dismissed as to the defendants Rhodes and Montgomery; and (4) that the injunction should be denied as to the defendant landlords Page, Hughes, and Chandler, who had obtained four judgments of eviction prior to July 25, 1946, the court stating as to the three defendants: "the Court concludes that as to all of said above-mentioned four eviction suits that the provisions of the Price Control Extension Act of 1946 and of the Rent Regulation for Housing are invalid, and the Court concludes that a judgment recovered before July 25, 1946 in an eviction suit prosecuted according to the State Laws of Texas should be respected, and that the Court

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will not issue an injunction."[1] (R. 86–91.) This appeal involves only points (3) and (4) of the court's conclusions. A stay pending the appeal was granted by the court below (R. 91–93).

---

[1] The reasoning of the court appears at page 64 of the Record, as follows:

> * * * But, aside from these penal provisions, and whether it comes under the provision of the Constitution, in reference to ex post facto law, it is the view of the court that when a man takes a judgment of the court, that was lawful at the time, it becomes a vested right, just as much so as if he had taken a deed of conveyance that was lawful at the time.
>
> Therefore, all judgments that were rendered, and become final before a new law on the OPA was enacted, this court is inclined to respect, and to treat them as vested rights, and as not coming directly under the Constitutional inhibitions of ex post facto law, because of the penal provision of the Statute.

See also page 65 of the record where the following colloquy shows the extent of the ruling:

> Mr. Gruber. Are you ruling, Your Honor, in connection with this, landlords who obtained judgments before July 25, that the regulation is invalid, which prevents such evictions, or the Emergency Price Control Act itself is invalid?
>
> The Court. Yes; I ruled as to those suits, that that provision that undertook to have included those cases, by having its provision made retroactive in there, is not valid.
>
> Mr. Gruber. That the Act itself is invalid?
>
> The Court. That it is invalid as to those suits.
>
> Mr. Gruber. You are not ruling, then, just to the regulation?
>
> The Court. No.

SUMMARY OF ARGUMENT

I

The Price Control Extension Act of 1946 revived the Rent Regulation for Housing for all purposes as of July 25, 1946, and as of that date the Rent Regulation for Housing prohibited a landlord from evicting a tenant who paid his rent, unless the landlord obtained from the Administrator a certificate authorizing him to pursue his remedies at local law to evict the tenant. Neither the Act nor the Regulation excepted from their operation a landlord who had obtained a judgment during the interim period (July 1–July 25, 1946) when it was not unlawful to obtain such a judgment. Consequently, the Act and Regulation prohibited a landlord who had obtained a judgment during the interim period from executing it after July 25, 1946. The court below did not question the reach of the Act and Regulation in that respect.

II

The court below was without jurisdiction to pass upon the validity of the Rent Regulation, although it did have jurisdiction to pass upon the validity of the Price Control Extension Act of 1946. Its decision on the validity of the Act, which, it is assumed, was based upon the due-process clause of the Fifth Amendment, is clearly erroneous.

It is well established that reasonable legislation which operates adversely upon rights acquired previous to the enactment of the legislation, does not constitute a denial of due process. This doctrine has been applied by this Court to unexecuted judgments as well as to contract and other property rights, and this Court has applied it to rights of the latter character where they were adversely affected by Price Control legislation. In any event there is no substantial difference, for the purpose of this doctrine, between rights acquired under judgments and those possessed under contracts or other forms of property.

The Act is not retroactive in its effect, inasmuch as it applies only to evictions after the enactment of the extension. Even if it be said that the Act is "retroactive" in its effect, the authorities are legion that this does not in itself compel this Court to strike down the legislation on that ground, especially where, as here, the persons asserting the grievance were fully warned as to the pending extension of the law.

III

The court below committed error in holding that Section 265 of the Judicial Code forbade it from enjoining the state officials. If that section would bar injunction proceedings against state officials, it would likewise bar such proceedings against landlords who proceed in state courts to evict their tenants, and this Court has held that

it does not bar such proceedings against the latter. The injunction provided by the Act would be rendered largely nugatory if all persons who are about to deprive tenants of the protection provided by the Price Control Act, could not be enjoined.

ARGUMENT

I.

THE PRICE CONTROL EXTENSION ACT OF 1946 AND THE RENT REGULATION FOR HOUSING PROHIBITED THE ENFORCEMENT OF THE EVICTION JUDGMENTS ENTERED BY THE STATE COURT

Section 18 of the Price Control Extension Act of 1946, enacted on July 25, 1946, *infra*, pp. 24–25, provided that that Act should be effective as of June 30, 1946, and that all regulations and orders issued under the Emergency Price Control Act, which were in effect on June 30, 1946, should be in effect in the same manner and effect as if the Act had been enacted on June 30, 1946, except that acts or omissions occurring between June 30, 1946, and the date of enactment should not be deemed to be violations of the Emergency Price Control Act, as amended, or of any regulations or orders issued thereunder. Thus, the Price Control Extension Act retroactively placed the Emergency Price Control Act and the regulations issued thereunder effective on June 30, 1946, in full force and effect, with the exception noted, during the interim period, and also placed the said Act and regulations in full force and

effect prospectively without exception as of July 25, 1946. See *Porter* v. *Shibe*, 158 F. 2d 68 (C. C. A. 10).

Section 6 of the Rent Regulation for Housing, *infra*, pp. 26–29, both on June 30, and July 25, 1946, provided that a tenant who paid the rent to which the landlord was entitled, could not be removed from the rented housing accommodations except where, on petition of the landlord, the Administrator certified that the landlord was entitled to pursue his remedies at local law to evict the tenant. Plainly then the reviving Act which caused the Rent Regulation to become of full force and effect, together with the Regulation itself, on July 31, 1946, the date upon which the instant action was instituted, prohibited landlords from proceeding to evict their tenants without complying with the requirements of the Regulation. Neither the Act nor the Regulation contained language which would except landlords who had obtained judgments during the interim period, and on July 25, 1946, the same day the Act became effective, the Office of Price Administration in an official interpretation announced that a landlord who had obtained a final judgment of eviction during the interim period might not lawfully evict the tenant under that judgment after the Act and Regulation had been revived, without complying with the eviction provision of the Regulation. See Official Interpretation 6–VI, *infra*, pp. 29–31. This in-

terpretation is not "plainly erroneous or inconsistent with the regulation," and it is, therefore, entitled to "controlling weight." *Bowles* v. *Seminole Rock & Sand Co.*, 325 U. S. 410. Consequently, on the date the instant action was instituted, the Rent Regulation, as revived by the Price Control Extension Act of 1946, prohibited the landlords here involved from evicting their tenants without complying with the requirements of the Rent Regulation, notwithstanding the fact that they had recovered final judgments of eviction during the interim period when such action by them did not violate the Emergency Price Control Act or the Rent Regulation.[2] The court below did not suggest that the Act and Regulation did not prohibit the evictions here in question, if they could validly do so.

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[2] Interpretation 6-VI is not inconsistent with Interpretation 6-I of May 29, 1943, *infra*, pp. 31–32.

Interpretation 6-I was concerned only with a situation where the Rent Regulation first became effective in a particular defense-rental area, and where there was no Act of the Congress which had made the regulation involved effective for any purpose at the time the judgments of eviction were recovered. Since landlords had no ready means of learning when a rent regulation would be made effective in a given area, it was thought that they should not be prevented from executing judgments of eviction which they had in good faith obtained at expense to themselves prior to the existence of any form of rent control in the particular vicinity.

Interpretation 6-VI, on the other hand, was concerned with a situation where the Congress had revived a pre-existing Act and regulation making them effective, except as to violations occurring during the interim period, from the date they had expired, thus creating, at all times, at least a dormant

II

THE PRICE CONTROL EXTENSION ACT OF 1946, AS APPLIED TO THE INSTANT CASE, IS CONSTITUTIONAL

The court below ruled not only that the Rent Regulation was invalid, but also that the Price Control Extension Act of 1946 itself was unconstitutional, in so far as it did not permit landlords to take advantage of judgments of eviction obtained during the period when there was no rent control and when the procuring of such judgments was not illegal. It is clear that in view of the exclusive-jurisdiction provisions of the Emergency Price Control Act (Section 204 (d)), the court below had no jurisdiction to make the first ruling, though it did have jurisdiction to rule on the constitutionality of the Act itself. *Yakus* v. *United States*, 321 U. S. 414, 430.

It is assumed that the decision on the constitutionality of the Act is based on the due-process clause of the Fifth Amendment, rather than on the prohibition against *ex post facto* laws (Art. I, Sec. 9), since the latter applies only to criminal prosecutions and not to civil

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form of rent control. In view of this and of the general understanding throughout the interim period that some form of rent control would shortly be put into effect, it was thought that the Congress intended, when enacting the reviving legislation, that a judgment of eviction recovered by a landlord when he was acutely aware that price control would shortly be resumed, should not be considered as vesting in him a right immune from impairment by the revived Act and Regulation.

actions. *Calder* v. *Bull,* 3 Dall. 386. But neither may it be said that the operation of reasonable legislation adversely upon rights previously acquired by judgment constitutes a denial of due process. That an otherwise valid exercise of legislative power[3] operates to defeat rights acquired through a judgment obtained before the legislative enactment is no barrier to its validity. In *Wright* v. *Union Central Life Ins. Co.,* 304 U. S. 502, an Act of Congress altering the terms of the period allowed for redemption on a judgment of foreclosure of a mortgage was sustained. In *Missouri & Arkansas L. & M. Co.* v. *Greenwood District,* 249 U. S. 170, a state law reducing the rate of interest prescribed in a judgment previously entered was upheld.[4]

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[3] Price and rent controls during periods of war or of inflationary pressures following war have been upheld by this Court as not violative of the due-process clauses of the Fifth or Fourteenth Amendments. Such controls have been deemed to be a valid exercise of the legislative power to avert the disastrous economic dislocation consequent upon war. *Block* v. *Hirsh,* 256 U. S. 135; *Marcus Brown Holding Co.* v. *Feldman,* 256 U. S. 170; *Yakus* v. *United States,* 321 U. S. 414; *Bowles* v. *Willingham,* 321 U. S. 503.

[4] Cf. also the long line of cases stemming from *The Schooner Peggy,* 1 Cranch 103, which apply legislative changes to cases while pending on appeal, though the effect may be to reverse a judgment which was correct when rendered. See, *e. g., Carpenter* v. *Wabash Ry. Co.,* 309 U. S. 23. See also *Paramino Lumber Co.* v. *Marshall,* 309 U. S. 370, in which a private Act of Congress was upheld which reopened a compensation case in which an award had already been made.

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Cases involving contract rights are also pertinent. For purposes of the present issue, there is no substantial difference between rights acquired through a judgment and those based upon a preexisting contract or other property right. See *Blount* v. *Windley*, 95 U. S. 173, 176, where this Court said: "The judgment itself presupposes, and is founded on, some antecedent obligation or contract, and is only higher evidence of that contract, because it now has the sanction of the judicial determination of its validity and amount by a court of law. The essential nature and character of the contract remains unchanged; and, in deciding how far it may be affected by legislation, we must look mainly to the original contract." And the cases in which the qualification or destruction of prior contractual rights by subsequent legislation has been upheld are legion. As stated in *Guaranty Trust Co. of New York* v. *Henwood*, 307 U. S. 247, 258–259, "contracts between private parties cannot create vested rights which serve to restrict and limit an exercise of a constitutional power of Congress." See also *Marcus Brown Holding Co.* v. *Feldman*, 256 U. S. 170; *Louisville & Nashville R. R.* v. *Mottley*, 219 U. S. 467; *Norman* v. *B. & O. R. Co.* 294 U. S. 240, 306–310; *Holyoke Power Co.* v. *Paper Co.*, 300 U. S. 324; *Home Building & Loan Assoc.* v. *Blaisdell*, 290 U. S. 398; *New York* v. *United States*, 257 U. S. 591; *East New York Savings Bank* v. *Hahn*, 326 U. S. 230. While

these cases arose under the federal interstate commerce power or the police power of the states, it can scarcely be doubted that the war power is at least equally broad. See *Hamilton* v. *Kentucky Distilleries Co.*, 251 U. S. 146, 156; *Hirabayashi* v. *United States*, 320 U. S. 81, 93. And in *Taylor* v. *Brown*, 137 F. 2d 654 (E. C. A.), certiorari denied, 320 U. S. 787, the Rent Regulation and the Emergency Price Control Act were upheld despite the contention that they invalidly impaired the obligations of contracts in existence before their promulgation. As stated by Mr. Justice Holmes in *Dillingham* v. *McLaughlin*, 264 U. S. 370, 374, "The operation of reasonable laws for the protection of the public cannot be headed off by making contracts reaching into the future."

It is important to note that the injunction sought by the Administrator is to restrain the eviction of tenants after the passage of the Extension Act of July 25 in accordance with regulations in effect at that time. The Act is thus not being retroactively applied. In *New York Central R. R.* v. *United States*, No. 2, 212 U. S. 500, 505, defendant railroad was indicted for paying a rebate contrary to the terms of the Elkins Act. The contract for the rebate had been made and the goods transported in interstate commerce prior to the passage of the Elkins Act; but the rebate was not actually given until after the law was passed. The Court held that

inasmuch as the rebate was given after the passage of the Act, to apply the Act to the rebate was not to give it retroactive operation regardless of when the contract was made or the goods transported. See also *United States* v. *Freight Association,* 166 U. S. 290, 342; *In re Rahrer,* 140 U. S. 545, 564–565; *Mulford* v. *Smith,* 307 U. S. 38, 51.

Many decisions of this Court establish that even as to physical property, which is at least as sacrosanct as a judgment, the fact that the prospective operation of a statute may deprive persons of rights or values which they possessed legally before the law was passed does not violate the due-process clause. *Mugler* v. *Kansas,* 123 U. S. 623; *In re Rahrer, supra; United States* v. *Freight Ass'n, supra; Hadacheck* v. *City of Los Angeles,* 239 U. S. 394, 408; *Chicago & Alton R. R.* v. *Tranbarger,* 238 U. S. 67; *Ruppert* v. *Caffey,* 251 U. S. 264, 301; *Samuels* v. *McCurdy,* 267 U. S. 188, 193; *Miller* v. *Schoene,* 276 U. S. 272, 279–280; *Mulford* v. *Smith, supra,* at pp. 49–51.

In *Mugler* v. *Kansas, supra,* a state law prohibiting the manufacture and sale of intoxicating liquor was upheld both as applied to factories lawfully built at great expense and to beer lawfully acquired before the passage of the law—although the investment in such property might be completely destroyed as a result of the statute. In *Ruppert* v. *Caffey, supra,* where the

application of the Volstead Act to beer on hand at the time of passage of the law was sustained, although the value of the property was thus destroyed. In *Hadacheck* v. *City of Los Angeles*, *supra*, a Los Angeles ordinance prohibiting the manufacture of bricks within a prescribed area was upheld as applied to a brick manufacturer with an already established business within the area. Cf. *In re Rahrer*, *supra*. In *Chicago & Alton R. R.* v. *Tranbarger*, *supra*, a statute imposing penalties upon a railroad for failure to maintain openings through its road-bed for drainage purposes was held valid as applied to an embankment lawfully built without such openings before the passage of the Act. As we have seen, *supra*, pp. 14–15, these principles have been applied repeatedly in upholding the application of statutes to previously existing continuing contracts.

Even if it be said that the Price Control Extension Act of 1946 is "retroactive" in its effect, there is, as shown by the foregoing authorities, no magic in the word "retroactivity" which compels this Court to strike down legislation to which that label has been attached. As stated in *Blount* v. *Windley*, 95 U. S. 173, 180:

> It may be said that this legislation is retroactive; and, as applied to the case before us, it is so. But there is no constitutional inhibition against retrospective laws. Though generally distrusted, they are often

> beneficial, and sometimes necessary. Where they violate no provision of the Constitution of the United States, there exists no power in this court to declare them void.

Or, as Mr. Justice Holmes observed (speaking as Chief Justice of the Massachusetts Judicial Court):

> * * * multitudes of cases have recognized the power of the Legislature to call a liability into being where there was none before, if the circumstances were such as to appeal with some strength to the prevailing views of justice, and if the obstacle in the way of the creation seemed small * * *

(*Danforth* v. *Groton Water Co.*, 178 Mass. 472, 476, recently quoted with approval in *Chase Securities Corp.* v. *Donaldson*, 325 U. S. 304, 315).

Retroactive legislation is particularly defensible where it can be shown that the person asserting a grievance had not been induced to rely upon the law previously in force. Compare *Welch* v. *Henry*, 305 U. S. 134; *Chase Securities Corp.* v. *Donaldson*, 325 U. S. 304, 316; and *Milliken* v. *United States*, 283 U. S. 15, 23, with *Forbes Pioneer Boat Line* v. *Board of Commissioners*, 258 U. S. 338, 340; see also Stimson, *Retroactive Operation of Law—A Problem in Constitutional Law*, 38 Mich. L. Rev. 30, 39; and this principle has been specifically applied to situations where legislation was pending at the time in Congress which would adversely affect the transactions in

question. *United States* v. *Hudson*, 299 U. S. 498, 501; Stone, Brandeis, and Holmes, JJ. concurring in *Untermyer* v. *Anderson*, 276 U. S. 440, 446–447. It can scarcely be contended that the appellees in the instant cases were not aware in July 1946, of the imminence of the renewal of rent controls. While there were sharp cleavages in Congress and between Congress and the President concerning other facets of price controls, there was virtual agreement that at least rent controls would have to be renewed. A number of bills for the purpose were introduced both immediately before and after the President's veto of the first extension bill; and the legislation was under consideration by Congress at the time that the appellees obtained their judgments of eviction.[3]

[3] No less than six bills were introduced for this purpose alone, most of them by members of Congress who were not otherwise favorable to price controls. These bills were: H. R. 6894, 92 Cong. Rec. 7779 (Rep. Summers); H. J. Res. 372, 92 Cong. Rec. 8205 (Rep. Wolcott); S. J. Res. 171, 92 Cong. Rec. 8168 (Sen. Byrd); H. J. Res. 375, 92 Cong. Rec. 8318 (Rep. Pittenger); S. J. Res. 175, 92 Cong. Rec. 8660 (Sen. Hawkes); H. R. 7017, 92 Cong. Rec. 8933 (Rep. Price).

Meanwhile, H. J. Res. 371, which became the Price Control Extension Act of 1946, had been introduced in the House on June 29, before the old law had expired. 92 Cong. Rec. 8132. It passed the House on July 1 (92 Cong. Rec. 8204), and an amended version passed the Senate on July 12 (92 Cong. Rec. 9005). The conference [redacted] was approved by the House on July 23 (92 Cong. Rec. 9918) and by the Senate on July 24 (92 Cong. Rec. 10064) and was signed by the President on the following day. Thus, during the entire period in which there was no price or rent control, the bill which was to become the Price Control Extension Act of 1946

In conclusion it will be noted that the Circuit Court of Appeals for the Tenth Circuit upheld the validity of the Price Control Extension Act in the closely analogous case of *Porter* v. *Shibe*, 158 F. 2d 68. There, the state law authorized a landlord to evict his tenant on notice without having to go into court to obtain a decree of eviction where the lease specified such an eviction right in the landlord. The landlord took advantage of this right under his lease during the interim period between July 1 and July 25, 1946, but had not succeeded by the latter date in forcing the tenant out. The district court refused to enjoin the landlord from carrying out his intention to remove the tenant. The circuit court of appeals reversed, and ordered the district court to issue the injunction. The validity of the Price Control Extension Act of 1946, even in its "retroactive" application, was upheld.

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was pending in Congress, and received wide newspaper and radio publicity throughout the country.

It may also be noted that in a radio address to the Nation which he made after vetoing the first extension bill, the President stated:

"But in the event of delay, I know that the United States can depend upon the patriotism and good sense of its citizens. Therefore, I call upon every businessman, every producer and every landlord to adhere to existing regulations, even though for a short period they may not have the effect of law. It would be to their own interest to exercise self-restraint until some action can be obtained from the Congress."

III

THE SHERIFF AND CONSTABLE SHOULD NOT HAVE BEEN DISMISSED FROM THE ACTION

The court below held that Section 265 of the Judicial Code (28 U. S. C. 379) forbade it from enjoining state officials from executing eviction judgments rendered contrary to federal law (R. 63–64). This is clear error. If Section 265 of the Judicial Code were applicable at all, it would bar injunction proceedings against the landlords who were plaintiffs in the state court just as fully as those against the state law enforcement officials; but this Court has held that that section has been repealed *pro tanto* by Section 205 (a) of the Emergency Price Control Act. *Bowles* v. *Willingham*, 321 U. S. 503; *Porter* v. *Dicken*, 328 U. S. 252. And in *Bowles* v. *Willingham* and *Porter* v. *Dicken*, *supra*, as well as in *Brown* v. *Wright*, 137 F. 2d 484 (C. C. A. 4), and *Bowles* v. *Hall*, 63 F. Supp. 826 (W. D. Pa.), injunctions under the Emergency Price Control Act ran against the landlord and the sheriff; and in *Porter* v. *Lee*, 328 U. S. 246, and *Brown* v. *Wick & Campbell*, 48 F. Supp. 887 (E. D. Mich.), it ran against the landlord and the justice of the peace. The issue was not specifically raised in these cases, but since the defect, if any, would have been jurisdictional, it could have been noted by any of the courts at any stage of the respective cases. Furthermore, it is submitted that no other determination could

be reasonable, since the Administrator's remedy of obtaining injunctions "to enforce compliance with the Act" would be valueless if all of the persons who are actually about to deprive tenants of the protection afforded them by the Act could not be restrained.

CONCLUSION

The judgment of the court below is erroneous. It should be reversed and the court below ordered to grant the relief requested.

Respectfully submitted.

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APPENDIX

1. The pertinent portions of the Emergency Price Control Act of 1942, 56 Stat. 23, 58 Stat. 632, 59 Stat. 306, 50 U. S. C. App. Supp. V, 901 et seq., provide as follows:

> SECTION 2 (d). Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices (including practices relating to changes in form or quality) or hoarding, in connection with any commodity, and speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or are likely to result in price or rent increases, as the case may be, inconsistent with the purposes of this Act.
>
> SECTION 4 (a). It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section

202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

SECTION 205 (a). Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

2. The pertinent portions of the Price Control Extension Act of July 25, 1946, Pub. Law No. 548, 79th Cong. 2d Sess., Chapter 671, provide as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 (b) of the Emergency Price Control Act of 1942, as amended, is amended by striking out "June 30, 1946" and substituting "June 30, 1947".

SECTION 18. (1) The provisions of this Act shall take effect as of June 30, 1946, and (2) all regulations, orders, price schedules, and requirements under the Emergency Price Control Act of 1942, as amended (except regulations or requirements under section 2 (e) thereof relating to meat, flour, or coffee), and the Stabilization Act of 1942, as amended, which were in effect on June 30, 1946, shall be in effect

in the same manner and to the same extent as if this Act had been enacted on June 30, 1946, and (3) any proceeding, petition, application, or protest which was pending under the Emergency Price Control Act of 1942, as amended, or the Stabilization Act of 1942, as amended, on June 30, 1946, shall be proceeded with and shall be effective in the same manner and to the same extent as if this Act had been enacted on June 30, 1946: *Provided,* That in any case in which the Emergency Price Control Act of 1942, as amended (except sections 204 and 205), or the Stabilization Act of 1942, as amended (except sections 8 and 9), or any regulation, order, or requirement under either of such Acts, prescribes any period of time within which any act is required or permitted to be done, and such period had commenced but had not expired on June 30, 1946, such period is hereby extended for a number of days equal to the number of days from July 1, 1946, to the date of enactment of this Act, both inclusive; *Provided further,* That no act or transaction, or omission or failure to act, occurring subsequent to June 30, 1946, and prior to the date of enactment of this Act shall be deemed to be a violation of the Emergency Price Control Act of 1942, as amended, or the Stabilization Act of 1942, as amended, or of any regulation, order, price schedule, or requirement under either of such Acts: *Provided further,* That insofar as the provisions of this Act require the Administrator to make any change in any maximum price, such provisions shall not be deemed to require such change to be made before the thirtieth day following the date of enactment of this Act.

3. The pertinent portions of the Rent Regulation for Housing (8 F. R. 7322; 10 F. R. 11666; 11 F. R. 5824, 8106) provide as follows:

> SECTION 6. *Removal of tenant*—(a) *Restrictions on removal of tenant.* So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and regardless of any contract, lease, agreement or obligation heretofore or hereafter entered into which provides for entry of judgment upon the tenant's confession for breach of the covenants thereof or which otherwise provides contrary hereto, * * *.
>
> (b) *Administrator's certificate*—(1) Removals not inconsistent with Act or regulation. No tenant shall be removed or evicted on grounds other than those stated above unless, on petition of the landlord, the Administrator certifies that the landlord may pursue his remedies in accordance with the requirements of the local law. The Administrator shall so certify if the landlord establishes that removals or evictions of the character proposed are not inconsistent with the purposes of the Act or this regulation and would not be likely to result in the circumvention or evasion thereof. The certificate shall authorize the pursuit of local remedies at the expiration of six months after the date of filing of the petition unless the Area Rent Director has de-

termined that a three months' period is adequate for the purposes of the Act in the particular area in issuing certificates under section 6 (d) (2), in which event the applicable period shall be three months. Within the discretion of the Area Rent Director the certificate may authorize the pursuit of local remedies for the removal or eviction of the tenant at a time less than six or three months, as the case may be, after the date of the filing of the petition if the petitioner establishes that unusual hardship would otherwise result, or that a lesser period in the particular case is consistent with the purposes of the regulation and the Act.

* * * * * *

(d) *Notices required*—(1) Notices prior to action to remove tenant. Every notice to a tenant to vacate or surrender possession of housing accommodations shall state the ground under this section upon which the landlord relies for removal or eviction of the tenant and the facts necessary to establish the existence of such ground. A written copy of such notice shall be given to the area rent office within 24 hours after the notice is given to the tenant.

No tenant shall be removed or evicted from housing accommodations by court process or otherwise, unless at least ten days (or, where the ground for removal or eviction is non-payment of rent, the period required by the local law for notice prior to the commencement of an action for removal or eviction in such cases, but in no event less than three days) prior to the time specified for surrender of possession and to the commencement of any action for removal or eviction, the landlord has given written notices of the proposed removal or

eviction to the tenant and to the area rent office, stating the ground under this section upon which such removal or eviction is sought, the facts necessary to establish the existence of such ground and specifying the time when the tenant is required to surrender possession: *Provided, however,* That the requirement of this sentence shall not apply to housing accommodations within the City of Baltimore, Maryland, the Northeastern New Jersey Defense-Rental Area, or the Trenton Defense-Rental Area, when the ground for the removal or eviction of a tenant is non-payment of rent.

If judgment for posession is sought by virtue of a confession of judgment or a warrant of attorney authorizing confession of such judgment against the tenant, the date of commencement of the action as referred to in this section shall be deemed to be the date of the filing in court of the first papers in the proceedings for the entry of such judgment.

Where the ground for removal or eviction of a tenant is non-payment of rent, every notice under this paragraph (d) (1) shall state the rent for the housing accommodations, the amount of rent due and the rental period or periods for which such rent is due. The provisions of this paragraph (d) (1) shall not apply if the eviction is pursuant to a certificate issued by the Administrator under the provisions of paragraph (b) of this section.

(2) Notice at time of commencing action to remove tenant. At the time of commencing any action to remove or evict a tenant, including an action based upon non-payment of rent, the landlord shall give written notice thereof to the Area Rent Office stating the title of the case, the

number of the case where that is possible, the court in which it is filed, the name and address of the tenant, and the ground under this section on which removal or eviction is sought.

(e) *Local law.* No provision of this section shall be construed to authorize the removal of a tenant unless such removal is authorized under the local law.

SCHEDULE A—DEFENSE-RENTAL AREAS

Name of defense-rental area	State	County or counties in defense-rental area under Rent Regulation for Housing	Maximum rent date	Effective date of regulation	Date by which registration statement to be filed (inclusive)
(316)	Fort Worth, Tex.	Tarrant	3-1-42	(1)	12-16-42

[1] Sections 1, 6, 13, Oct. 15, 1942; remaining sections, Nov. 1, 1942.

4. The pertinent Interpretations of the Rent Regulation are as follows:

(a) Interpretation 6–VI: *Evictions Pending On July 25, 1946.*

The Emergency Price Control Act of 1942, as amended, on July 25, 1946, was extended by striking out "June 30, 1946" and substituting "June 30, 1947," as the expiration date of the Act. Section 18 provides that the provisions of the Act shall take effect as of June 30, 1946. In this section a savings clause was inserted for the protection of persons who had acted contrary to the regulation during the interim period between June 30, 1946, and July 25, 1946. This savings clause provides that no act or transaction occurring between said dates shall be deemed a violation. As a result any eviction which occurred during the interim period was not a violation of the Act or regulation. By reason of this the tenant

who has been in fact evicted during this interim period receives no protection. If, however, he is in possession on July 25, 1946, he is entitled to the protection of the eviction provisions of the regulation and it is a violation of the regulation for the landlord on or after that date to attempt to evict by court process or otherwise except in accordance with the provisions of Section 6 of the regulation.

ILLUSTRATIONS

1. L had no ground under the regulation for eviction. On July 1 L instituted an eviction suit in the local court, obtained final judgment and writ of possession and obtained T's eviction prior to July 25, 1946. Even though L's action was contrary to Section 6 of the rent regulation, it is provided in the Act that his eviction of T shall not be deemed a violation and the eviction is valid.

2. L is a veteran who owned the housing accommodations prior to October 20, 1942, and who sought in good faith immediate possession of the premises as a dwelling for himself. L complied with Section 6 of the regulation and obtained final judgment on July 15, 1946. However, T was still in possession on July 25, 1946. Since L has complied with the regulation, his eviction of T by utilizing the processes of the court under the judgment obtained is not a violation.

3. L had no ground for eviction under the regulation and did not comply with the notice requirements of Section 6 (d). L instituted suit on July 1, 1946, and obtained judgment for eviction on July 15, 1946, under the local law, but T was still in

possession on July 25, 1946. Even though L's act in instituting suit and obtaining judgment is not a violation of the regulation by reason of the savings clause in the Act it is nevertheless a violation of the regulation for L after July 25, 1946, to attempt to evict T by the utilization of court processes or otherwise except in accordance with the regulation. This is true even though L has obtained final judgment for eviction in the local court. It would be a violation for L to attempt T's eviction by utilizing an execution or writ of possession which had been stayed by the court until after July 25, 1946, or for L to attempt to evict T through an execution or writ of possession which had been issued before said date but not in fact executed.

4. L obtained a certificate relating to eviction under Section 6 (b) (2) effective six months from June 1, 1946. On July 1, 1946, L instituted an eviction action and obtained judgment on July 15, 1946, but T was still in possession on July 25, 1946. Although L's action in instituting suit was not a violation by reason of the savings clause in the Act, any attempt by L to evict T on or after July 25, 1946, by the utilization of court processes or otherwise is a violation of the regulation. L can, of course, proceed to evict under local law at the expiration of six months from June 1, 1946.

(Issued July 25, 1946)

(b) Interpretation 6-I—May 29, 1942.

Where an action to evict is pending on the date the regulation becomes effective in a particular defense-rental area, the provisions of Section 6 are applicable unless a court order has been entered prior to the

effective date of the Regulation directing the tenant to surrender possession. If such an order has been entered, the court may use its ordinary processes for enforcement of such order and the landlord may request such processes. If no such order has been entered, the landlord may not further pursue his proceedings except in accordance with Section 6.

Assume the effective date of the Regulation is June 1, 1942. On April 30, 1942 B occupies housing accommodations under a lease with A, the landlord, and on that date the lease terminates. On May 1, B tenders rent for the month of May which A refuses to accept. A institutes eviction proceedings in accordance with local law. On May 29, 1942, A secures judgment for possession. B is still in possession on June 1, 1942. A may thereafter seek enforcement of the judgment pursuant to local law without reference to the grounds of eviction set forth in Section 6 of the Regulation.

Assume the same facts, except that on May 31, 1942 judgment for possession has not as yet been entered. The landlord must comply not only with local law but also with Section 6 of the Regulation, and may not further prosecute his proceeding unless he has grounds of eviction under said section.

(Issued May 29, 1942; revised May 15, 1943)

U. S. GOVERNMENT PRINTING OFFICE: 1943

FILE COPY

No. 682

In the Supreme Court of the United States

OCTOBER TERM, 1946

PHILIP B. FLEMING, TEMPORARY CONTROLS ADMINISTRATOR, APPELLANT

v.

DUSTY RHODES, SHERIFF, TARRANT COUNTY, TEXAS, ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF THE COURT'S JURISDICTION UNDER SECTION 2 OF THE ACT OF AUGUST 24, 1937

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Probable jurisdiction of the above-entitled cause was noted by this Court on December 9, 1946 (R. 97). At the oral argument of the case on April 7, 1947, a question was raised as to this Court's jurisdiction under Section 2 of the Act of August 24, 1937, 50 Stat. 752, 28 U. S. C. 349a, and leave was granted for the filing of a memorandum on the issue.

The suggestion is that the Price Control Extension Act of 1946, effective July 25, 1946, does

not expressly prohibit a landlord who has obtained an eviction judgment during the period of suspension of controls (July 1–25, 1946) from evicting a tenant after July 25, 1946, without compliance with the Rent Regulation, but does so, if at all, through general language; that the constitutional question presented is thus an issue of the validity of the Act "as applied" by the Administrator in his Regulation to these particular landlords; that this is essentially an issue of "construction" rather than constitutionality; and that the case is, therefore, not within the purview of Section 2 of the Act of August 24, 1937.

(1) This suggestion finds no support in the language or legislative history of the Act. The pertinent language of Section 2 is as follows:

> In any suit or proceeding in any court of the United States to which the United States, or any agency thereof, or any officer or employee thereof, as such officer or employee, is a party, or in which the United States has intervened and become a party, and *in which the decision is against the constitutionality of any Act of Congress*, an appeal may be taken directly to the Supreme Court of the United States by the United States or any other party to such suit or proceeding upon application therefor or notice thereof within thirty days after the entry of a final or interlocutory judgment, decree or order * * *. [Italics supplied.]

Thus, no qualifications are stated in the statutory language.[1] The statute requires only that the "decision" be against constitutionality, and there is no doubt that such was the decision here (see main brief, pp. 5–6). There is no basis for an inference that when Congress used the term "constitutionality", it intended a meaning different from that which the term traditionally has had in this field of legislation, namely, "constitutionality" not only on the face of the enactment but also as applied to the particular circumstances. The evident policy of Section 2 was to permit a quick review by this Court of any "decision against the constitutionality" of an Act of Congress, and thus to minimize the effect of an erroneous decision which, so long as it stands unreversed, impedes the enforcement of a federal program, and may influence other courts as well.[2]

[1] And no qualifications have been suggested by the cases under this Section — though no case presenting the precise point involved here has been decided. This Court stated no qualifications when it analyzed the provisions of Section 2 of the 1937 Act in *I. L. G. W. U.* v. *Donnelly Garment Co.*, 304 U. S. 243, 249, as follows: "That section applies, *however the question of constitutionality may arise*, provided the United States is or has become a party *and the decision is against the validity of the Act.* That section does not require a court of three judges, and no provision is made for a direct appeal to this Court if the decision is in favor of the constitutionality of the Act." [Italics supplied.]

[2] We are advised that the decision of the district court in the instant case has delayed decision in numerous similar cases, pending the ruling of this Court.

This dangerous effect of a decision against constitutionality is not dependent upon whether the decision concerns the statute "on its face" or as applied. Every statute must be "applied"; and every statute has to be "construed". When Congress passed the 1937 Act, it was well aware that some of the major constitutional attacks upon federal legislation had been directed at statutes not only on their face but as applied and construed to important areas of activity, particularly, for example, in cases involving the application of broad statutory provisions like "affecting commerce". To exclude all such cases from Section 2 would mean that Congress had enacted an incomplete provision, incapable of bringing to this Court as speedily as possible cases in which a district court has refused on constitutional grounds to give effect to federal legislation.

The legislative history of the Act of August 24, 1937, lends support to the construction indicated by its language and policy. (1) Congressman Hatton Sumners, the sponsor of the bill in the House, observed at one point that it "gives the right of appeal directly to the Supreme Court in cases where the right to appeal would now be to the Circuit Court of Appeals"[8]—and the right to

[8] 81 Cong. Rec. 3272:

"Mr. CHANDLER. But I am speaking about this particular amendment, which seeks to give direct appeal in all suits in which the United States is a party, and I am simply

appeal to a circuit court of appeals on constitutional questions is of course unqualified by any "constitutionality as applied" doctrine such as is suggested here; (2) the district court's discretion, in a suit between private parties, to determine whether there was a "substantial" enough constitutional question to allow intervention by the Attorney General (who would have a consequent right of direct appeal) was eliminated in the Senate;[4] (3) the House Report on the bill referred

raising the point whether as to criminal cases it would be an error to provide that.

"Mr. SUMNERS of Texas. May I make this suggestion to my colleague? Of course, this would not attempt to give the right of appeal where the right to appeal does not now exist under the law; at least, that is our view. It gives the right of appeal directly to the Supreme Court in cases where the right to appeal would now be to the Circuit Court of Appeals."

[4] The House Bill (H. R. 2260, 75th Cong. 1st Sess.) provided in paragraph (a) that in any federal case where the United States was not a party and the constitutionality of a federal statute was drawn into question, the court having jurisdiction should certify such fact to the Attorney General if the Court was of the opinion "that a substantial ground exists for questioning the constitutionality of the statute." Paragraph (b) provided that the Attorney General could appeal to the Supreme Court, and such appeals were to take precedence "over cases in the Supreme Court in which a substantial question of constitutionality has not been drawn."

This limitation was eliminated in the bill passed by the Senate, which became law. Members of the Senate Committee explained that it was the intention to give discretion to the Attorney General himself whether to intervene (81 Cong. Rec. 8507–08). And it was provided in Section

to the right of direct appeal by the United States as a right to appeal "from *any* decision or order of a lower court which is adverse to the constitutionality of an act of Congress".[5] [Emphasis added.] While these are but fragments of legislative history, they confirm the absence of any legislative purpose to narrow the term "constitutionality" as used in the 1937 Act.

(2) Persuasive precedents exist under other statutes to support the Court's jurisdiction in this case. Thus, the same kind of contention (*i. e.*, that a decision on constitutionality of a statute "as applied" is not enough to bring into

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2 that, whether the United States is a party or has intervened and become a party, "appeals under this section shall be heard by the Supreme Court of the United States at the earliest possible time and shall take precedence over all other matters not of a like character."

[5] House Report No. 212, p. 2 (75th Cong., 1st Sess.): "The importance to the Nation of prompt determination by the court of last resort of disputed questions of the constitutionality of acts of the Congress requires no comment. It is provided by the committee amendment to this bill that the Attorney General in his discretion may appeal directly to the Supreme Court from any decision or order of a lower court which is adverse to the constitutionality of an act of Congress, and that such appeals shall have precedence over other cases in the Supreme Court."

The House Bill had referred in paragraph (c) to "any suit or proceeding in any court of the United States * * * in which the decision is against the constitutionality of any statute of the United States." Section 2 of the bill passed by the Senate, which became the law, used the same language (except for the phrase "any act of Congress" in place of "any statute of the United States").

play the statutory provisions for direct review by this Court) was rejected in cases under the statute which prior to 1925 permitted direct appeals from district courts where the constitutional validity of a federal statute was drawn into question.[6] Thus, in *Lipke* v. *Lederer,* 259 U. S. 557, where the attack was against a particular form of administrative enforcement of the National Prohibition Act, not specifically provided by statute, the Court overruled the contention "that the cause involves only questions of construction and, therefore, the appeal should be dismissed" (at pp. 559–560). In *Towne* v. *Eisner,* 245 U. S. 418, the district court had construed the Revenue Act reference to "income" as covering stock dividends, and upheld the statute as thus construed. This Court reversed unanimously, in an opinion by Mr. Justice Holmes. The opinion rejected the contention that there was no jurisdiction on direct appeal because the case turned on the construction of the statute.

[6] Section 5 of the Act of March 3, 1891, Section 238 of the Judicial Code prior to the 1925 amendment, read in pertinent part: "appeals or writs of error may be taken from the district courts * * * direct to the Supreme Court in the following cases: * * * In any case that involves the construction or application of the Constitution of the United States; in any case in which the *constitutionality of any law of the United States*, or the validity or construction of any treaty made under its authority, is *drawn in question*; [and] in any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States." [Italics supplied.]

The Court thought that the contention "that the statute as it is construed and administered is unconstitutional" gave it jurisdiction. In *Spreckels Sugar Refining Co.* v. *McClain,* 192 U. S. 397, a statute imposed a percentage tax on gross receipts of sugar refining corporations, based on returns to be submitted; the plaintiff claimed the statute was inapplicable to him, and that in any event the Government in processing his returns should not have considered certain items as part of his gross receipts. The case went to the circuit court of appeals and then to this Court which said (192 U. S. at 400, 407): "One of the contentions of the plaintiff was that apart from its constitutionality, the act of 1898, properly construed, did not embrace the claims here in dispute, and therefore did not authorize the defendant to demand and collect the taxes here in question. * * * The plaintiff was entitled to bring it here directly from the Circuit Court or, at its election, to go to the Circuit Court of Appeals for a review of the whole case." And in *Billings* v. *United States,* 232 U. S. 261, where a federal tax on the use of foreign-built yachts was attacked for unconstitutionality, and various grounds were asserted for inapplicability of the tax, including the charge that it was intended to be prospective only, and not to apply to use during the year prior to the effective date of the law, jurisdiction on direct appeal was assumed by the Court without discussion.

(3) So, too, the same kind of contention was rejected in cases under Section 237 (a) of the Judicial Code, 28 U. S. C. 344 (a)[7] permitting review as of right, rather than review by certiorari, from the highest courts of the states, where the application of a state statute has been held not to conflict with the Federal Constitution. In the leading case of *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282, the plaintiff had argued, in an action on a contract for sale and delivery of wheat, that a Kentucky statute imposing certain conditions for the doing of business upon foreign corporations was inapplicable to the transactions which were allegedly interstate commerce; and that as applied to such transactions the statute was invalid. This Court said, in allowing review by writ of error (at p. 289):

> that the statute was not claimed to be invalid *in toto* and for every purpose does not matter. A statute may be invalid as applied to one state of facts and yet valid as applied to another. * * * Besides, a litigant can be heard to question a statute's

[7] "A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

> validity only when and so far as it is being or is about to be applied to his disadvantage. * * * Neither does it matter on what ground the court upheld and enforced the statute. * * *

And see *Eureka Pipe Line Co.* v. *Hallanan*, 257 U. S. 265, in which this Court's jurisdiction by writ of error was upheld where a state taxing statute unquestionably valid as applied to intrastate commerce had been applied to oil moving in interstate commerce. Accord: *United Fuel Gas Co.* v. *Hallanan*, 257 U. S. 277. In *Reconstruction Finance Corp.* v. *Beaver County*, 328 U. S. 204, the Court rejected objections to its jurisdiction in upholding the validity of a Pennsylvania "real property" tax statute "as applied" to certain machinery installed in an aircraft plant.[8] An administrative order of a state bureau applying a statute governing workmen's compensation was held to be a state "statute" for purposes of the jurisdictional provision, in *Sultan Ry. & Timber Co.* v. *Department of Labor and Industries*, 277 U. S. 135; and similar decisions have been made with respect to ordinances issued under general authority of state

[8] "The question presented on this appeal from the Supreme Court judgment is whether the Supreme Court's holding that this machinery is 'subject to' a local 'real property' tax means that the Pennsylvania tax statute, 72 Purdon's Pennsylvania Stat. (1936) 5020–201, *as applied* conflicts with § 10 of the Reconstruction Finance Corporation Act." [Italics supplied.]

statutes (*King Manufacturing Co.* v. *Augusta*, 277 U. S. 100; *Jamison* v. *Texas*, 318 U. S. 413) and with respect to an order of a land-grant state university defining the scope of compulsory military training under a state statute authorizing regulation of the scope of compulsory military training (*Hamilton* v. *Regents of University of California*, 293 U. S. 245). And in *Saltonstall* v. *Saltonstall*, 276 U. S. 260, where plaintiff in error sought "a determination that the Massachusetts statutes taxing inheritances did not affect the property passing to the beneficiaries under the trust, or, if applicable, were 'unconstitutional'" (p. 267), the Court said "the case is properly here on writ of error" and addressed itself to "the single objection discussed as a federal question by that court in its opinion, viz. that the statutes as applied deprive plaintiffs in error of their property without due process of law because retroactive as to them" (p. 268).

Such decisions as *Memphis Natural Gas Co.* v. *Beeler*, 315 U. S. 649, are not to the contrary. They show that where the attack is upon administrative action *per se*, it does not meet the jurisdictional requirements. The Court indicated in the latter case that the attack must be on the statute or the statute "as applied". And it is "not enough that an appellant could have launched his attack upon the validity of the statute itself as

applied; if he has failed to do so we are without jurisdiction over the appeal" (at pp. 650–651).[9]

(4) Under the general, three-judge court statutes (Section 266 of the Judicial Code, 28 U. S. C. 380;[10] and Section 3 of the Act of August

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[9] See also *Charleston Federal S. & L. Assn.* v. *Alderson*, 324 U. S. 182, 185–186:

"Where it appears from the opinion of the state court of last resort that a state statute was drawn in question, as repugnant to the Constitution, and that the decision of the court was in favor of its validity, we have jurisdiction on appeal. For we need not inquire how and when the question of the validity of the statute was raised when such question appears to have been actually considered and decided by that court. * * * But it does not appear from the opinion of the Supreme Court of Appeals that the federal question was presented to or considered by that court. While the opinion intimates that appellants' objection was made to the *administration* of the statute, it nowhere indicates that they contended that, *as applied*, the statute was invalid as repugnant to the federal Constitution". [Italics supplied.]

[10] "No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any office of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such

24, 1937, 28 U. S. C. 380a),[11] this Court has more than once emphasized that the disruption of normal judicial procedure and the "severe burden" on the judicial system caused by the convocation of a three-judge court justify a more narrow application of those statutes than their language may suggest (see *Ex parte Collins*, 277 U. S. 565; *Phillips* v. *United States*, 312 U. S. 246). Notwithstanding this consideration, the decisions under Section 266 do not disclose any significant departure from the consistent trend of judicial construction in this field.

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application * * * An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case. * * * The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit."

[11] "No interlocutory or permanent injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any Act of Congress upon the ground that such Act or any part thereof is repugnant to the Constitution of the United States shall be issued or granted by any district court of the United States, or by any judge thereof, or by a circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge. * * * An appeal may be taken directly to the Supreme Court of the United States upon application therefor or notice thereof within thirty days after the entry of the order, decree, or judgment granting or denying, after notice and hearing, an interlocutory or permanent injunction in such case."

In *City of Cleveland* v. *United States*, 323 U. S. 329, the Court held that Section 266 of the Judicial Code, requiring a three-judge court and permitting a direct appeal, was applicable to a suit by the United States to restrain certain local taxing officials from applying Ohio tax laws to the property in certain United States Housing projects. The state laws in question were the provisions of the Ohio General Code, Sections 5328 and 5625–3 that "all property in this state shall be subject to taxation, except only such as may be expressly exempted therefrom," and that "the taxing authority of each subdivision is hereby authorized to levy taxes annually * * * on the real and personal property within the subdivision." The local officials had applied these laws to the housing property in question; it was the issue of the validity of these laws only as thus construed and applied which was held to make Section 266 of the Judicial Code applicable. And in *Ex parte Bransford*, 310 U. S. 354, 361 the Court observed that "it is necessary to distinguish between a petition for injunction on the ground of the unconstitutionality of a statute as applied, which requires a three-judge court, and a petition which seeks an injunction on the ground of the unconstitutionality of the result obtained by the use of a statute which is not attacked as unconstitutional. The latter petition does not re-

quire a three-judge court" [12] In *Phillips* v. *United States, supra,* as well, it appeared that the complaint had not attacked the statute as applied, but rather the executive action itself (at p. 252). See generally *Query* v. *United States,* 316 U. S. 486, 490.

(5) There is a further consideration, arising out of the particular structure of the Emergency Price Control Act, which rebuts the suggestion that the issue of constitutionality of the Act as applied is insufficient to make applicable Section 2 of the 1937 Act. The suggestion was based on the assumption that it was only the Act "as applied" through the prohibitions of the Regulation that created the constitutional issue. Insofar as this assumes that the prohibitions of the Act are less specifically aimed at the appellees than are the prohibitions of the Regulation, it is erroneous. The Regulation was officially interpreted on July 25, 1946 to apply to the precise situation involved here,[13] but this does not mean that the regulation

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[12] The Court's later reference (at 361) to *Ex parte Collins,* 277 U. S. 565, for the proposition that "§ 266 is inapplicable unless the action complained of is directly attributable to the statute" is to be read with the Court's subsequent reference to the *Collins* case in *City of Cleveland* v. *United States, supra.* In the latter case, the *Collins* case was distinguished as holding that an injunctive attack upon purely local municipal action "on behalf of the locality" was not within Section 266.

[13] See main brief, pp. 10–11. Thus, the fact that the word "judgment" is not included in the Section 6 (a) clause, "regardless of any contract, lease, agreement or obligation heretofore or hereafter entered into" evidences no intention to

was more specifically applicable than the Act. For the Act in Section 4 (a) specifically incorporates the prohibitions of the regulations. That section provides: "It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person * * * to do or omit to do any act, in violation of any regulation or order under section 2 * * *."

* * * * * *

In summary, there is no sound reason for supposing that the language of Section 2 of the 1937 Act means anything different from what it plainly says: that where the "decision is against the constitutionality of any Act of Congress" (and the United States or an officer thereof is a party), there is a right of direct appeal to this Court. Consideration of the legislative history, and of the decisions under other analogous statutes, not only fails to compel a reading into the unqualified language of Section 2 of a qualification of the kind which has been suggested, but rather gives affirmative support to the jurisdiction of the Court in this case.

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exclude judgments. The listing is to be regarded as illustrative rather than exclusive. Cf. *Ford* v. *United States*, 273 U. S. 593, 612; *Phipps* v. *Commissioner of Internal Revenue*, 91 F. 2d 627, 629 (C. C. A. 10), certiorari denied, 302 U. S. 742.

CONCLUSION

In view of the foregoing, it is submitted that this Court has jurisdiction of this appeal under Section 2 of the Act of August 24, 1937 (50 Stat. 752, 28 U. S. C. 349a).

Respectfully submitted.

GEORGE T. WASHINGTON,
Acting Solicitor General.

WILLIAM E. REMY,
Deputy Commissioner for Enforcement,

DAVID LONDON,
Director, Litigation Division,

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Solicitor, Litigation Division,
Office of Price Administration,
Office of Temporary Controls.

APRIL 23, 1947.

U. S. GOVERNMENT PRINTING OFFICE 1947

SUPREME COURT OF THE UNITED STATES

No. 682.—October Term, 1946.

Philip B. Fleming, Temporary Controls Administrator, *v.* Dusty Rhodes, Sheriff, Tarrant County, Texas, et al.	On Appeal from the District Court of the United States for the Northern District of Texas.

[April 28, 1947.]

Mr. Justice Reed delivered the opinion of the Court.

This appeal is from an interlocutory order of the District Court of the United States for the Northern District of Texas denying preliminary injunctions. Appellant's predecessor sued certain landlord appellees and the Sheriff and a constable of Tarrant County, Texas, in that United States district court for an injunction to stop eviction of tenants under state judgments that were recovered by the landlords in suits for restitution of leased property.[1] The state suits were filed by the landlords without the certificates required by the Rent Regulations for Housing to maintain such actions. 8 F. R. 7322; 10 F. R. 11666; 11 F. R. 5824, 8106. The state judgments were entered after June 30, 1946, the termination date of the Emergency Price Control Act, and before July 25, 1946, the date of the approval by the President of the Price Control Extension Act. As there was no federal price control statute during this period, these judgments will be treated as valid when granted.

The decision of the district court, denying the motion as to the landlords and directing the entry of the order, was

[1] Jurisdiction of suits for such injunctions is conferred upon the district courts of the United States by § 205 of the Emergency Price Control Act of 1942, 56 Stat. 23, 58 Stat. 632, 59 Stat. 306, and the Price Control Extension Act of July 25, 1946, Pub. Law No. 548, 79th Cong., 2d Sess.

based on the unconstitutionality, as applied to these state judgments, of that portion of § 18 of the Price Control Extension Act of July 25, 1946, that declared, "The provisions of this Act shall take effect as of June 30, 1946, . . ." [2] This provision the Court thought was unconstitutional (1) because the words affected the state judgments retroactively by bringing them under the Extension Act [3] and (2) because the vested rights, created by the prior judgments in the landlords to obtain restitution of their leased properties, could not be destroyed by subsequent legislation. Apparently it was felt that the due process clause of the Fifth Amendment forbade such regulation of the incidents of judgments. The question is raised as to whether the Act of August 24, 1937, 50 Stat. 751, confers power upon this Court to review, on direct appeal, a ruling against the constitutionality of an act of Congress when the ruling of unconstitutionality is made in the application of the statute to a particular circumstance, as in this appeal, rather than upon the challenged statute as a whole. A reading of the first three sections of the act convinces us that Congress granted litigants in courts of the United States a direct appeal to this Court from decisions against the constitutionality of any act of Congress as applied in the pending litigation.

The first section only authorizes the intervention of the United States in private litigation, "whenever the constitutionality of any Act of Congress affecting the public

[2] Price Control Extension Act of July 25, 1946, *supra*.

[3] As this opinion relies upon the validity under the price control acts of the prohibition of future eviction of tenants in § 6 of the Rent Regulation for Housing, 8 F. R. 7322; 10 F. R. 11666; 11 F. R. 5824, 8106, it is unnecessary to consider further whether the mere inclusion of these past judgments within the reach of the price control legislation, by advancing the effective date of the act, is constitutional. Compare *Blodgett* v. *Holden*, 275 U. S. 142, 146, and *Untermeyer* v. *Anderson*, 276 U. S. 440, 445, with *United States* v. *Hudson*, 299 U. S. 498.

interest is drawn in question."[4] It has nothing to do with appeals. The second section allows an appeal to this Court from a final or interlocutory order only when the United States is a party, through the preceding § 1 or originally; and the decision is against the constitutionality of the federal law. It provides for expedition in our determination of the appeal. Section three relates to the allowance or refusal of injunctions staying acts of Congress in whole or in part on the ground of repugnancy to the Constitution, and requires a three-judge court, expedition in determination and notice to the United States. The specific provision for prompt review of judgments granting or denying "in whole or in part" such an injunction is limited to applications for stays of acts of Congress because of their unconstitutionality. Thus the constitutionality of federal acts comes to us by direct appeal, under the Act of August 24, 1937, only when the United States is a party to the litigation below or an injunction is sought. This enables the United States to exercise large discretion, by its determination as to whether or not to intervene, as to what cases are reviewable directly in this Court.[5] The Congress intended prompt review of the constitutionality of federal acts.[6] Since § 1 allows

[4] The last three words were construed in *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282, 288, to allow appeals under Judicial Code § 237 to this Court from final judgments of state courts of last resort upholding the validity of state statutes against a challenge to their application to particular circumstances because of their repugnance to federal law. This was a settled construction for the words. See *Kepner* v. *United States*, 195 U. S. 100, 124.

[5] *Garment Workers* v. *Donnelly Co.*, 304 U. S. 243, 249–50.

[6] H. Rep. No. 212, 75th Cong., 1st Sess., p. 2:

"The importance to the Nation of prompt determination by the court of last resort of disputed questions of the constitutionality of acts of the Congress requires no comment."

S. Rep. No. 963, 75th Cong., 1st Sess., pp. 3–4:

"The United States is not excluded by the principle thus stated, from drawing the judicial power to its proper assistance either as an

intervention when the constitutionality of an act is "drawn in question" and § 2 allows appeal after intervention, it follows that there is an appeal from an order that invalidates, as unconstitutional, a statute as applied. To limit the generality of the language of § 2 of the Act of August 24, 1937, to cases that involved only the constitutionality as a whole of the challenged statutes might seriously impair prompt determinations of matters of great public interest. Litigants may challenge the constitutionality of a statute only in so far as it affects them.[7] We hold that jurisdiction of the appeal from the challenged order is conferred upon this Court by 28 U. S. C. § 349a.

The Court was also of the view that § 265 of the Judicial Code barred any injunction against the state officials.

The appellant sought injunctions against future eviction of these tenants through writs of restitution or other process by which eviction might be consummated. Sections 2 (d), 4 (a) and 205 (a) of the Emergency Price Control Act of 1942, as amended, and Rent Regulation § 6 (a), set out below.[8] Such an injunction is in accord with the administrative Interpretations of

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original party, or as an intervenor, when, in private litigation, decision of the constitutional question may affect the public at large, may be in respect of matters which by the Constitution are entrusted to the care of the Nation, and concerning which the Nation owes a duty to all the citizens of securing to them their common rights."

[7] *Blackmer* v. *United States*, 284 U. S. 421, 442; *Virginian R. Co.* v. *Federation*, 300 U. S. 515, 558; *Carmichael* v. *Southern Coal Co.*, 301 U. S. 495, 513.

[8] Emergency Price Control Act of 1942, 56 Stat. 23, 58 Stat. 632, 59 Stat. 306:

Section 2 (d). "Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, . . . regulate or prohibit . . . renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which

the Rent Regulation.[9] The properties involved in this litigation were defense-area housing accommodations.

in his judgment are equivalent to or are likely to result in . . . rent increases, . . . inconsistent with the purposes of this Act."

Section 4 (a). "It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to . . . do or omit to do any act, in violation of any regulation or order under section 2, . . . or to offer, solicit, attempt, or agree to do any of the foregoing."

Section 205 (a). "Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond."

Rent Regulation for Housing, 8 F. R. 7322, 10 F. R. 11666; 11 F. R. 5824, 8106:

"Section 6. "*Removal of tenant—(a) Restrictions on removal of tenant.* So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and regardless of any contract, lease, agreement or obligation heretofore or hereafter entered into which provides for entry of judgment upon the tenant's confession for breach of the covenants thereof or which otherwise provides contrary hereto, . . ."

[9] Pike & Fischer, OPA Service, Rent, Interpretations of the Rent Regulation for Housing, § 6–VI, issued July 25, 1946:

"(a) Interpretation 6–VI. *Evictions Pending On July 25, 1946.*

"The Emergency Price Control Act of 1942, as amended, on July 25, 1946, was extended by striking out 'June 30, 1946' and substituting 'June 30, 1947,' as the expiration date of the Act. Section 18 provides that the provisions of the Act shall take effect as of June 30, 1946. In this section a savings clause was inserted for the protection of persons who had acted contrary to the regulation during the interim period between June 30, 1946, and July 25, 1946. This savings clause pro-

There is no suggestion that the heretofore referred to sections of the price control acts and § 6 of the Rent Regulations for Housing do not authorize these legal proceedings. The constitutionality of the price control acts, generally considered, is unquestioned. *Bowles* v. *Willingham*, 321 U. S. 503. The sole inquiry for us, at this point, is whether it was erroneous for the district court to refuse to allow the temporary injunction, because to do so would invade the constitutional right of the landlord appellees to retain the fruits of their "vested rights" in the valid judgments.

As the appellant is undertaking to enjoin future eviction of the tenants or lessees, our consideration is not affected by the proviso of § 18 of the Extension Act, set out in the margin.[10] The retroactive provision of § 18, quoted above at note 2, is inapposite for the same reason. It is immaterial whether the state judgments were obtained before or after the effective date of the Extension Act. The effort of the appellant is to enjoin future proceedings for eviction after the acquisition by the landlord appellees through valid judgments of what the district court characterized as "vested rights." Federal regulation of future

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vides that no act or transaction occurring between said dates shall be deemed a violation. As a result any eviction which occurred during the interim period was not a violation of the Act or regulation. By reason of this the tenant who has been in fact evicted during this interim period receives no protection. If, however, he is in possession on July 25, 1946, he is entitled to the protection of the eviction provisions of the regulation and it is a violation of the regulation for the landlord on or after that date to attempt to evict by court process or otherwise except in accordance with the provisions of Section 6 of the regulation."

[10] "*Provided further*, That no act or transaction, or omission or failure to act, occurring subsequent to June 30, 1946, and prior to the date of enactment of this Act shall be deemed to be a violation of the Emergency Price Control Act of 1942, as amended, or the Stabilization Act of 1942, as amended, or of any regulation, order, price schedule, or requirement under either of such Acts: . . ."

action based upon rights previously acquired by the person regulated is not prohibited by the Constitution. So long as the Constitution authorizes the subsequently enacted legislation, the fact that its provisions limit or interfere with previously acquired rights does not condemn it. Immunity from federal regulation is not gained through forehanded contracts. Were it otherwise the paramount powers of Congress could be nullified by "prophetic discernment." [11] The rights acquired by judgments have no different standing.[12] The protection of housing accommodations in defense-areas through the price control acts may be accomplished by the appellant notwithstanding these prior judgments. The preliminary injunctions should have been granted.

Only a word need be said as to the contention that § 265 of the Judicial Code forbids an injunction against the execution of state judgments by state officers.[13] A contention was made before this Court in similar cases last term that § 265 forbade a federal injunction to stay such proceedings in any court of a state. The argument was not accepted. We thought that § 205 (a) of the Emergency Price Control Act of 1942 created an exception to § 265.[14] No spe-

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[11] *Sproles* v. *Binford*, 286 U. S. 374, 391; *Louisville & Nashville R. Co.* v. *Mottley*, 219 U. S. 467; *Philadelphia, B. & W. R. Co.* v. *Schubert*, 224 U. S. 603; *Calhoun* v. *Massie*, 253 U. S. 170; *Norman* v. *Baltimore & Ohio R. Co.*, 294 U. S. 240, 303–11; *Guaranty Trust Co.* v. *Henwood*, 307 U. S. 247, 259.

[12] *Wright* v. *Union Central Ins. Co.*, 304 U. S. 502, 509; *Paramino Lumber Co.* v. *Marshall*, 309 U. S. 370.

[13] Judicial Code § 265:

"The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

[14] *Porter* v. *Lee*, 66 S. C. R. 1096; *Porter* v. *Dicken*, 66 S. C. R. 1094; *Lowles* v. *Willingham*, 321 U. S. 503, 510.

cific mention was made in these opinions as to whether state officers who were parties in the case could be enjoined. However, we do not see any ground, under § 265 of the Judicial Code, to differentiate as to stays against a sheriff or a constable or stays against the parties to the litigation. We think the District Court had power to stay the sheriff and constable.

Judgment reversed.

SUPREME COURT OF THE UNITED STATES

No. 682.—October Term, 1946.

Philip B. Fleming, Temporary Controls Administrator, *v.* Dusty Rhodes, Sheriff, Tarrant County, Texas, et al.	On Appeal from the District Court of the United States for the Northern District of Texas.

[April 28, 1947.]

Mr. Justice Frankfurter, dissenting.

In considering the scope of our appellate jurisdiction, great weight should be given to the strong policy of the Congress, ever since the Judiciary Act of 1891, to keep the docket of this Court within manageable proportions for the wise disposition of causes by the ultimate judicial tribunal. That consideration applies also to the few Acts, passed since the creation of the circuit courts of appeals, which allow cases to come here directly from the district court where issues of great public importance, such as the constitutionality of legislation, are at stake.

In *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282, this Court gave an expansive content to review, as a matter of right, of State court judgments where is drawn in question "the validity of a statute." Our jurisdiction was held to cover review of a finding of unconstitutionality in the application of a statute to a particular situation, though the statute is otherwise left in full force and effect. While, for the reasons set forth in the dissent of Mr. Justice Brandeis, I have never been reconciled to the soundness of that decision, I accept it. But I do not feel obliged to extend its scope beyond its requirements.

There is an important difference between review of State court decisions and decisions of the district courts. The latter are subject to review as a matter of course by

the circuit courts of appeals. They are not dependent on review by grace through *certiorari*, as would be comparable State decisions except for the *Dahnke-Walker* doctrine. I do not feel myself required by the Act of August 24, 1937, to hold that direct appeal lies to this Court whenever a district court finds unconstitutional an application of a statute to the circumstances of a particular case. It is one thing not to allow final determination of the fate of a federal statute to be delayed until a decision of a district court can go through a circuit court of appeals and then reach this Court. It is quite another thing to bring here directly from a district court every decision indicating unconstitutionality in application, no matter how restricted its incidence. Of course this does not mean that direct review of district court decisions by this Court would be available only for cases that involve "the constitutionality as a whole" of a challenged statute. The Act of 1937 refers explicitly to invalidation "in whole or in part." Although this is made explicit in § 3 of the Act, the scope of direct review here, on the score of unconstitutionality, ought not to be different under different sections of this Act. A direct appeal is called for only when a district court strikes down, in whole or in part, that which Congress has unequivocally written. It is unwarranted when all that is in issue is whether the allowable scope of what Congress has written excludes a particular situation.

The immediate case gives point to these general observations. The incidents of a judgment are not the same in all the States. The effect of this Act upon judgments in the different States may thus involve consideration of the procedure of a particular State. These are hardly questions of the kind which led to the authorization, by the Act of August 24, 1937, of direct review where a district court's decision "is against the constitutionality of any Act of Congress." 50 Stat. 751, 752.

Nor should it be decisive of this Court's exceptional jurisdiction on direct appeal from the district courts that the Government is the litigant. Like other litigants the Government at times attaches importance to a particular case out of all proportion to the more comprehensive factors that should control this Court's jurisdiction. We cannot be blind to the fact that review here is sometimes pressed in response to commendable administrative earnestness which fails, however, to take fully into account the demands of this Court's business. Moreover, it was not the interest of the Government as such which moved Congress to grant direct appeals from the district courts. By the Judiciary Act of 1925 Congress narrowly confined direct review here of district court decisions regardless of the character of the litigant, and the extension of such review by the Act of 1937 should be strictly confined.

I would dismiss this appeal and remand the case to the Circuit Court of Appeals. See *Oklahoma Gas & Electric Co.* v. *Oklahoma Packing Co.*, 292 U. S. 386, 392, and *Phillips* v. *United States*, 312 U. S. 246, 254.